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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 325

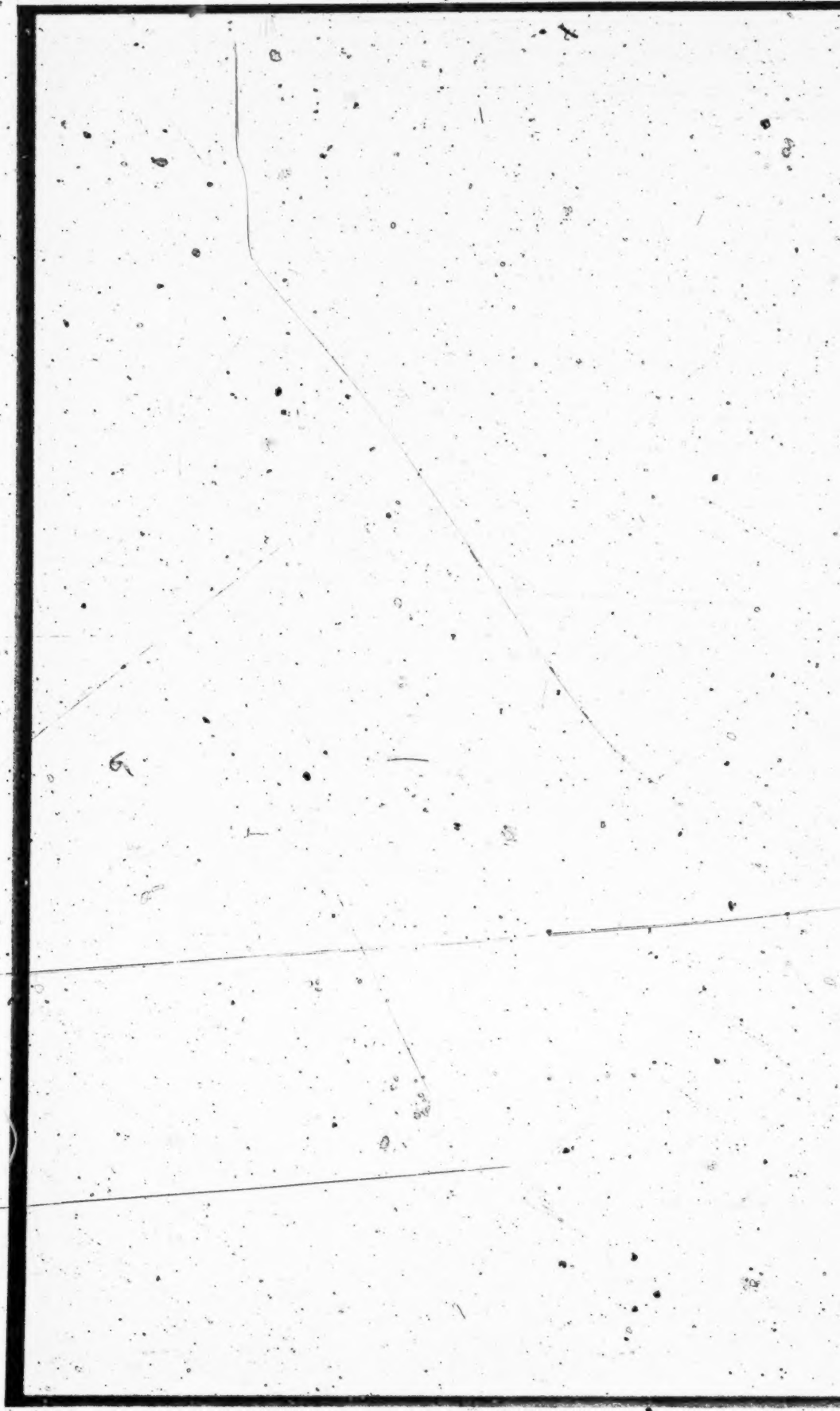
JAMES A. WATTS AND WALTER B. BLUE, PETITIONERS,

vs.

SEWARD SCHOOL BOARD AND STATE BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, RESPONDENTS.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF ALASKA

PETITION FOR CERTIORARI FILED JULY 3, 1967
CERTIORARI GRANTED OCTOBER 9, 1967



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[Filed June 15, 1961.]

IN THE SUPERIOR COURT FOR
THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT

JAMES A. WATTS and
WALTER B. BLUE,

Petitioners

v.

No. 61-728

SEWARD SCHOOL BOARD and
BOARD OF EDUCATION, APPEAL
HEARING COMMITTEE,

Respondents.

PETITION FOR WRIT OF REVIEW

Petitioners above named move the Court for issuance of a Writ of Review directed to the Alaska State Board of Education requiring that agency to forward to the above court for review the record of the proceedings held by that agency, as well as the record of the proceedings held by the Seward School Board, in connection with the non-retention of teachers Walter B. Blue and James A. Watts. The decision of which review is sought is set forth on Exhibit "A" attached hereto. (Petitioners have been furnished only with an un-dated, un-signed verifax copy such as that marked Exhibit "A".)

This petition is filed pursuant to the provisions of Rules 109-115, inclusive RCP, and is based on the following representations.

1. *Brief History of this Case.* Petitioners are long-time residents of Seward, Alaska and are teachers by training and practice. Petitioner Blue has been a life-long resident of Seward; Petitioner Watts has been a resident and teacher at Seward for approximately eight or nine years. Their teach-

ing contracts were subject to automatic renewal in accordance with the provisions of No. 37-5-11 ACLACS unless certain statutory procedures were followed. In the spring of 1960, petitioners were notified by the Seward School Board that their teaching contracts would be terminated. Petitioners have always alleged and still do maintain that this action was undertaken because they were instrumental in the formation of a teacher's union at Seward, Alaska. Petitioners have maintained that their non-retentions were retaliatory in nature and that they were discriminated against because of their union activities. Petitioners requested a hearing before the Seward School Board which was held in April of 1960; the Seward School Board affirmed its decision to non-retain the petitioners; and petitioners appealed from that decision to the Alaska State Board of Education. That higher administrative agency held a hearing in the summer of 1960 and remanded the case to the Seward School Board for a new hearing for the reason that the lower Board had failed to enter findings of fact or conclusions explicating the basis for its decision. Accordingly, a second hearing was held by the Seward School Board in the fall of 1960 and at the conclusion thereof the Seward School Board reaffirmed its earlier decision (again without having entered findings of fact; however, this deficiency was *subsequently* remedied). Appeal therefrom was taken again to the State Board of Education and in May of 1961, the Board of Education rendered the decision which is here complained of, a copy of which is attached hereto marked Exhibit "A".

2. *Petitioners Have No Right of Appeal or Alternatives "Plain, Speedy or Adequate Remedy".* The decision of which review is here sought was rendered at the conclusion of a hearing which the State Board of Education conducted in purported compliance with the provisions of Ch. 92, No. 3(c), SLA 1960. This section of the code amended No. 37-5-13 ACLAS (Ch. 71, No. 3, SLA 1957) to provide for a right of appeal from local school board hearings. The 1960 act did not provide for a right of appeal from the decision of the Board of Education to the Superior Court of the

State of Alaska. Hence, only through a Petition for Writ of Review can judicial review of the higher administrative agency's decision be secured.

3. *The Board of Education, Appeal Hearing Committee, Exercised Its Functions Erroneously and Arbitrarily and Exceeded Its Jurisdiction, With Result That the Petitioners Have Been Deprived of Property Without Due Process of Law.*

A. *The Petitioners Were Not Afforded a Hearing De Novo.* In 1959 the State Legislature adopted the Administrative Procedure Act. No. 2 A-12-2 ACLACS (Ch. 143, Ch. 2, No. 2, SLA 1959) expressly provides that the procedures of the Alaska State Board of Education conducted in connection with the discharge of teachers shall be held pursuant to the provisions of the Administrative Procedure Act. Under this act, the hearing held by the respondent State Board of Education should have been conducted (a) in Anchorage, for the transaction involved occurred in the South Central Senatorial District, (b) with the right of subpoena power extended to the petitioners, (c) with the right granted the petitioners to call witnesses on their behalf and to introduce exhibits and to cross-examine opposing witnesses. The 1960 act, Ch. 92, No. 3(c) is silent on the subject of whether the hearing held by the State Board of Education should be in the nature of a De Novo hearing such as that contemplated by the Administrative Procedure Act, or confined to the record. Hence, the provisions of the Administrative Procedure Act were applicable in this case. However, the respondent Board of Education conducted its hearing in Juneau; announced prior to the hearing that witnesses would not be heard and that the Board's consideration would be limited and confined to the record such as was produced by the Seward School Board. Petitioners have been denied the opportunity of a De Novo hearing. By failure to comply with applicable law the Alaska State Board of Education acted beyond its jurisdiction and, to that extent, acted arbitrarily and its decision is voidable.

B. *The Board of Education, Appeal Hearing Committee, Usurped the Function and Jursidiction of the Alaska State Superior Court.* In its decision, the respondent Board of Education declares that, although it is not bound by the Administrative Procedure Act, it did adopt the very standards set forth in No. 2 A-12-25 ACLACS (Ch. 143, Ch. 2, No. 25, SLA 1959). This section the Legislature pointedly reserved to the Superior Court of the State of Alaska. Not only did the Board of Education decline to afford petitioners the De Novo hearing guaranteed by the Administrative Procedure Act, but having done so the Board then substituted its judgment for the judgment of a Superior Court Judge on a matter and in a way in which the Legislature by implication has declared the respondent is not competent (let alone a hearing officer) to act.

C. *The Board of Education Failed to Enter Any Findings and Failed To Render Any Conclusions to Support Its Decision.* The decision complained of consists of but one sentence, for all practical purposes, and that sentence reads as follows:

> Since after mature consideration of these records and arguments we do not feel that the original decision of the school board was unsupported by substantial evidence, we are constrained to agree with that board's decision."

Whereas the Seward School Board had entered the elaborate findings of fact and had (through its attorney) entered conclusions wherein it endeavored to justify its decision, the respondent State of Education has entered none. Although the Board of Education has blandly concluded the decision of the Seward School Board was "supported by substantial evidence", the Board of Education conspicuously failed to enter any findings of fact. This deficiency vitiates the entire decision for we respectfully submit that, even if true, many of the findings of fact entered by the Seward School Board would not, as a matter of law, constitute cause for non-retention. And by failing to specify which of the lower

school board's findings it adopted, the Board of Education has rendered a decision which is vulnerable to the same challenges that could legitimately be raised against findings and conclusions adopted by the lower board. This deficiency is made more apparent in the following paragraph.

3. *The Findings of the Seward School Board Were Not Supported by "Substantial Evidence".* In summary, the Seward School Board terminated the petitioners' teaching contract on three grounds:

(a) Allegedly the petitioners failed to substantially comply with certain school board regulations.

(b) Allegedly the petitioners were guilty of "immoral conduct" in circulating a petition for the recall of Seward School Board members.

(c) Allegedly the petitioners were guilty of immoral conduct in circulating an open letter such as that attached marked Exhibit "B".

In point of fact, the record of the lower board hearing is completely devoid of any proof whatever (let alone substantial evidence) that the Seward School Board ever adopted any regulations at all. If this was one of the grounds on which the Board of Education adopted its decision, then it is patently arbitrary and it is patently unsupported by any substantial evidence. By having failed to specify just which findings it *did* deem supported by substantial evidence, the Board of Education acted arbitrarily, acted beyond its jurisdiction, and acted in violation of the petitioners constitutional rights to be protected against the deprivation of their property without due process, as guaranteed both by the 14th Amendment to the United States Constitution as well as by Article I, Section 7, of the Constitution of the State of Alaska.

With respect to (b), it was admitted that the petitioners did circulate a petition seeking the recall of certain school board members; however, the facts are clear that this circulation was carried on during the summer months after

school was out; the petitioners were only doing what they had a legal right to do. As a matter of law, such conduct could not constitute "immoral conduct" within the meaning of No. 37-5-12 ACLACS which provides that immoral conduct tending to bring an individual concerned or the teaching profession into public disgrace is a ground for non-retention.

Likewise, it is admitted that the petitioners circulated an open letter of which a copy is attached hereto marked Exhibit "B"; however, as a matter of law, the circulation of such a petition during the summer months, after school was closed, could not constitute "immoral conduct" as contemplated by the Legislature. The determination of this question is, ultimately, a question for the courts of this State to rule on. Hence the necessity for the issuance of the Writ of Review prayed for.

4. *The Respondents Were Arbitrary and Capricious.* The Board of Education was arbitrary in accepting without reservation the findings made by the Seward School Board which were in turn based on prejudicial, unfair, and improper evidence. The record of the lower board hearing is replete with instances of arbitrary procedure and unfair tactics utilized by the Seward School Board in its endeavor to build a record which would prejudice the minds of the Board of Education, Appeal Hearing Committee. For example, counsel for the Seward School Board over petitioners' strenuous objections persisted in inquiring into Walter Blue's religious beliefs, in clear violation of his rights as guaranteed by No. 58-6-1 ACLA 1949. The Seward School Board attempted to get into evidence a scandalous, unidentified letter containing remarks about petitioner Blue which are slanderous per se and which the Seward School Board knew full well had nothing whatever to do with the charges it had raised in its Notice of Non-Retention. The only purpose for its introduction was to prejudice the hearing public and the members of the Board of Education against petitioner Blue.

5. *The Petitioners' Claims Are Such That Justice Demands an Immediate Review of the Decision in Question.*

The petitioners are by profession and training teachers. The petitioners have lived at Seward for many years; one for his entire life-time. Their right and opportunity to pursue their chosen profession and to continue to do so in the area of their homes and their families is now at stake. Petitioners seek the following relief: That the decision rendered by the State Board of Education be held for nought and that they be ordered reinstated; or, in the alternative, that a hearing De Novo in accordance with the provisions of the Administrative Procedure Act be granted the petitioners.

Finally, petitioners incorporate herein by reference as though fully set forth entire contents of their Memorandum and Citation References which was filed with the State Board of Education at the conclusion of that agency's hearing.

Dated this 15th day of June, 1961.

CONNOLLY & WALTON
Attorneys for Petitioners

/s/ Peter B. Walton
Peter B. Walton

EXHIBIT "A"

BEFORE THE HEARING COMMITTEE
OF THE
ALASKA STATE BOARD OF EDUCATION

WATTS AND BLUE	)	
	)	
v.	)	OPINION
	)	
SEWARD SCHOOL BOARD	)	
	)	

This is an appeal from a decision of the Seward School Board pursuant to Section 3c of Chapter 92, SLA 1960.

Appellants James Watts and Walter Blue were teachers in the public schools of Seward, 1958, 1959, and 1960. In March, 1960, they were served notices of non-retention and bills of particulars in March, 1960. These notices and bills were the result of the circulation among the general public of Seward about the middle of May, 1959, as well as the efforts of the teachers to secure the recall of the School Board.

Appellants requested a hearing pursuant to Section 3a of Chapter 92 within the statutory period. After many hours of testimony which resulted in a record of over 400 pages long, the Seward School Board decided to adhere to its earlier decision. The School Board accompanied their decision with written findings of fact.

This hearing committee is not compelled to follow the procedures of the Administrative Procedure Act since this hearing was more in the nature of an appellate argument than in the usual procedure outlined in Chapter 2 of the Act (Ch. 143, SLA 1959). However, certain sections were followed substantially by this Board in its conduct of the hearing, particularly applicable subsections of Sections 13 and 14, Chapter 2, 143, SLA 1959. Since the Administrative Procedures Act is concerned primarily with hearings in

the first instance, it does not set forth the weight to be given the Seward School Board's decision; to resolve these questions the hearing committee has followed the mandate of Section 25(2) of Chapter 2, Chapter 143, SLA 1959 as to "whether there was a fair hearing; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.

The Board has reviewed very carefully the entire previous record and listened with interest to the arguments presented by appellants' attorney and by counsel for the School Board. Since after mature consideration of these records and arguments we do not feel that the original decision of the School Board was unsupported by substantial evidence, we are constrained to agree with that Board's decision. Therefore the action of the Seward School Board in issuing non-retention certificates was justified and that action is hereby affirmed.

Done at , Alaska, this day of May, 1961.

EXHIBIT "B"

Seward, Alaska
May 18, 1959.

AN OPEN LETTER TO THE
SEWARD SCHOOL BOARD
Seward, Alaska

Gentlemen:

A Seward Branch of the American Federation of Teachers, affiliated with the AFL-CIO, has applied for and received

confirmation of its charter. The AFT is a recognized organization of professional teachers and thereby commands recognition by the Seward School Board.

The Seward Local takes this means of informing the Seward School Board (and the public) of our stand in the current struggle for a good school. We hold that incidents occuring during the last year have reached such proportions as to be definitely detrimental to the morale of our teaching staff and the effectiveness of the local educational system.

1. Illegal non-retention of three teachers, reflecting on the professional reputations of those involved, in violation of Section 138 of the State School Laws, which was later corrected only after the insistence of the Seward Local of the American Federation of Teachers in a public hearing with legal counsel.
2. It is a legitimate duty of administration to maintain or create harmony in the school, and the tension noted in the pupils, and the "friction" which some of them were aware of, does not fit this requirement.
3. Non-compliance with the fire drill regulation requiring ten fire drills per year (Sec. III, b, 4, Page 9, Rules and Regulations for the school staff /local/). This applies to both school buildings, one of which is a dangerous building.
4. Ordering the custodian, Jesse Moore, to do technical electrical work beyond his skill in a dangerous building.
5. On different occasions threatening to "get one third of the faculty this year, and half of the remainder next year" in an apparent attempt to "purge" the faculty. Why Mr. Fabricius should have had this preconceived and hostile attitude is unknown. Teachers have raised the question, "How can one man, a stranger coming into a town, have the right to tamper with the livelihood of teachers, taxpayers, prop-

erty owners, and upset a school system in a single year's time?" More than bringing teachers and others into public disgrace and disrespect, actions cited have jeopardized the property and investments of several people, without giving legitimate cause and without regard for their feelings and personal rights.

6. Provoking the resignation of an outstanding teacher by forbidding him to ride the school bus in what *seems* to be a violation of the intent of the Rules and Regulations Affecting School Transportation, Page 13, Item 31, Laws of the Territory, etc., the apparent authoritarian mishandling of this resignation impairing the teacher's chances for a teaching position elsewhere. This action has placed the School Board and the taxpayers in the possible position of a suit to secure payment of the contract.

7. Dictatorial treatment of teachers, forcing them into the choice of submitting and taking it at the loss of personal dignity, or fighting back in a public spectacle.

8. Speaking in a peremptory and threatening manner in the presence of a pupil, to Mr. Smith.

9. Two specific instances have occurred violating the requirement to provide Educational Leadership in the Local Regulations.

   a. Neglect to permit the development of a proper music program.

   b. Information relative to the Drama Festival held at Palmer was not made known to the teachers or the student body, although the school had participated ardently and with distinction the previous year.

   c. This same requirement is violated in overtly *or* covertly driving out Mr. Conder, Mr. Swick, Mr. Smith, and possibly others who had a definite contribution to make to the functions of the school.

10. Firing of Mrs. Davis apparently on the basis of personal dislike rather than for dereliction of duty or inefficiency. This resulted in public discussion reflecting adversely on the school, and placed Mrs. Davis in the position of consulting an attorney relative to the collection of salary allegedly due her.

We have, or can secure, sworn statements on every item.

We, the Seward Local of the American Federation of Teachers, have made every effort to secure correction of illegal, unethical, and unfair acts on the assumption that when the School Board knew of them it would take corrective action.

On May 8, 1959, in a public meeting with the School Board, compliance with the law in the matter of non-retention was secured only after great opposition and protest that the "Law had not been tested, and some educators do not regard it as a good law."

At this same time we withheld information contained in this letter in order to keep the school functioning through the end of the school year and commencement.

We then invited the School Board to meet with us privately to clarify the items here presented, to give Mr. Fabricius and the School Board the opportunity to reply, and to determine the quality of the list of administrative statements and actions. This, in effect, was giving Mr. Fabricius and the Board the opportunity for self defense which was denied the teachers who were not given contracts in April. We arranged a meeting time to suit the convenience of the Board, and our invitation was accepted.

With the exception of Mr. Howell, President, the Seward School Board DID NOT APPEAR, nor was the administration represented.

Therefore we request an immediate special open School Board meeting Tuesday night, May 19, for the purpose of presenting to the Board and the public particulars of administration in the Seward Public Schools, with announcement of the meeting by the Board over Station KIBH. At this

time the Local shell demand immediate, guaranteed, substantial improvement in administrative policies including:

1. Validation of contracts offered to formerly non-retained teachers and those effected by additional education requirements.
2. Correction of the situation regarding Mr. Smith and Mr. Swick.
3. Avoidance of unreasonable reassignment of teachers wherever possible.
4. Conformity with standard ethical and professional standards personnel policies, such as outlined by AFT and NEA, especially regarding:
   a. Notification of teachers before their written notice of non-retention.
   b. Attempting to give constructive criticism to teachers, in an effort to correct and help personnel.

It is our sincere hope that, at this meeting, we can reach mutually acceptable solutions to the many problems facing us at this time.

Very truly yours,

SEWARD LOCAL
AMERICAN FEDERATION
OF TEACHERS

Copies: To patrons of the
Seward School.

TAPE NO. B-73 Page 8 DATE 12-8-61
Court Convened AT 2:30 p.m. PRESENT: Judge Fitzgerald
Clerk Haugan
CASE NO. 61-728. CASE TITLE: James A. Watts &
Walter B. Blue
LOG v.
NUMBER PROCEEDING: Seward School Board
0800.2 M.O. Rendering Oral
Decision

A hearing on Motion to dismiss petition for writ of review having been had 7-28-61 & decision reserved,

Court now renders bral decision

(1) that review is granted.

(2) that the decision of the Board of 5-26-61 is vacated.

(3) that this proceedings is remanded to the Board of Education with directions to the Board to make specific findings: (a) whether the petitioners were guilty of immoral conduct & if so, then setting forth the manner & by what occasion such occurred, (b) whether Regulation E(7) of the Seward School Board has been duly adopted & if so, when such regulations became effective, (c) if Regulation E(7) was duly adopted whether the petitioners violated the regulation & if so, then setting forth the manner & by what occasion the violations occurred. The Board may augment the record & take additional evidence, may apply its own rules or other procedures in conducting any hearing, & may establish the time & place of hearing to meet the convenience of the Board.

Upon making the determinations herein required, the Board is directed to reduce its findings & its decision to writing. Since the Board is an agency of the State, no costs or attys' fees will be allowed. Petitioners to prepare appropriate Order & Judgment.

Clerk's notes:
Call Watts - 12-8
Call Pease - 12-8

Entered Court Journal at Anchorage
No. B-2 Page 350.
Docketed:

[Filed December 28, 1961.]

MANDATE

A petition was filed by the above named petitioners seeking issuance of a writ of review directed to the Alaska State Board of Education for the purpose of reviewing a decision rendered by that agency, adverse to the petitioners, on or about May 26, 1961.

The decision complained of constituted an affirmation of a previous decision rendered by the Seward School Board to affirm its action, likewise previously taken, non-retaining petitioners as teachers in the Seward public school system. By its decision, the Seward School Board (1) concluded that petitioners Blue and Watts had been guilty of "immoral conduct" under sub-section (2) of Section (2), Chapter 92, SLA, 1960, by (a) circulating a certain Open Letter, (b) circulating a certain Petition for Recall, and that petitioner Watts was guilding of such "immoral conduct" on two different occasions when he engaged in conferences with teachers Frampton and Richardson, and that petitioner Blue was guilty of "immoral conduct" on one occasion when he made a certain speech to the members of the ILWU at Seward; (2) concluded that petitioners Watts and Blue were guilty of substantial non-compliance with a regulation previously adopted by the Seward School Board in that they allegedly circulated the same Open Letter among the public without first submitting it through the school superintendent. By its decision the Board of Education merely declared that

> ". . .we do not feel that the original decision of the school board was unsupported by substantial evidence, we are constrained to agree with that deci-

> sion. Therefore the action of the Seward School Board in issuing non-retention certificates was justified and that action is hereby affirmed."

The State Board of Education entered no findings of fact or conclusions of law and failed to specify which of the findings previously entered by the Seward School Board it approved of and which findings, if any, it found unsupported by the evidence. Likewise, the State Board of Education failed to specify by entering conclusions which of the bases, or whether all of the bases, advanced by the Seward School Board were proper grounds for non-retention in its opinion.

Petitioners instituted this proceeding by filing a Petition for Writ of Review under Rule III, Rules of Civil Procedure. Petitioners sought review on five grounds and alleged that the State Board of Education through its Appeal Hearing Committee had exercised its functions erroneously and arbitarily in these ways: (a) In not providing the petitioners with a hearing de novo under the Administrative Procedures Act, (2) in usurping the functions and jurisdiction of the Superior Court, (3) in failing to enter findings of fact and conclusions of law in support of its decision, (4) in finding and concluding that all of the findings of the Seward School Board were supported by substantial evidence, (5) in acting arbitrarily and capriciously.

The respondents, Seward School Board and Board of Education, appeared in this proceeding by filing a motion to dismiss the Petition for Writ of Review on five grounds, to-wit, that (1) petitioners failed to file a cost bond, (2) the Administrative Procedures Act does not apply to a proceeding under sub-section (2), Section (2), Chapter 92, SLA, 1960, (3) the State Board of Education followed the accepted and usual course of administrative procedures on appeal by simply affirming the findings and conclusions of the inferior administrative agency and by not making its own findings and conclusions, (4) the Superior Court in a proceeding such as this should not weigh the evidence consi-

dered by the Seward School Board or by the Board of Education, (5) the determination by the Board of Education, finding the petitioners' actions constitute immorality and substantial non-compliance with the regulations of the Seward School Board are not subject to review by this Court.

Having considered these various contentions, I conclude (1) that petitioners were not entitled to a de novo hearing before the Board of Education, Appeal Committee, under the Administrative Procedures Act, (2) by authority of court order entered July _____, 1961, the petitioners did file a cost bond and the same is now in effect; the respondents have in no way been damaged by virtue of any delay in the filing thereof which may have occurred. With respect to the remaining contentions of both petitioners and respondents, I make the following conclusions: Sub-section (1), Section (2), Chapter 92, SLA, 1960, provides generally that teachers may be non-retained for cause. Sub-section (2), Section (2), Chapter 92, SLA, 1960, defines "cause" as either (a) incompetency, (b) immorality, or (c) substantial non-compliance with school laws or applicable school board regulations. The petitioners were non-retained by the Seward School Board for the reason that, in the Seward School Board's opinion, they were guilty of "immorality" and also of "substantial non-compliance with school board regulations". Immorality is defined by sub-section (2) of Section (2), Chapter 92, SLA, 1960, as being:

> "(2) Immorality, which is defined as conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect;"

I conclude that, as a matter of law, the circulation by the petitioners of the Open Letter to the Seward School Board under date of May 18, 1959, is not immoral conduct within the meaning of the statute. I also conclude that, as a matter of law, the circulation of a petition seeking the recall of members of the Seward School Board is not immoral conduct within the meaning of the statute.

Since the State Board of Education did not enter findings of fact or conclusions of law, and did not specify whether it found *all* of the inferior board's findings supported by substantial evidence; since the State Board of Education did not specify which, if less than all, of said findings were supported by substantial evidence; since the State Board of Education did not specify which or all of the conclusions rendered by the inferior board it adopted, I have no way of knowing whether the State Board of Education rested its decision in part on the conclusions of the Seward School Board that the circulation of such a petition for recall and circulation of such an Open Letter constituted immoral conduct within the statute. I have no way of knowing whether the State Board of Education rested its decision entirely or in part on the Seward School Board's conclusion that the petitioners had been guilty of substantial non-compliance with a Seward School Board regulation. In short, I am unable to determine which findings were found supported by substantial evidence by the Board or whether the Board found that all of the Seward School Board's findings were supported by substantial evidence. For these reasons; I conclude that the State Board of Education exercised its review functions erroneously to the injury of substantial rights of the petitioners. Therefore,

IT IS HEREBY ORDERED AND DECREED:

(1) That review is granted.

(2) That the decision of the State Board of Education, through its Appeal Committee, of May 26, 1961, be and it hereby is vacated and set aside.

(3) That this proceeding be and it hereby is remanded to the State Board of Education, Appeal Committee, for the purpose of enabling the State Board of Education, Appeal Committee, to make specific findings of fact and enter concrete conclusions as to:

(a) Whether the petitioners were guilty of immoral conduct and, if so, setting forth the manner and incidents and occasions constituting such immoral conduct,

(b) Whether regulation E (7) of the Seward School Board was ever duly adopted and, if so, on what date such regulation was adopted and became effective,

(c) Whether the petitioners ever violated such a regulation, if such a regulation was duly adopted and did thereafter become effective; and, if so, then setting forth the manner, incidents and the occasions by which the petitioners did violate such a regulation.

IT IS FURTHER ORDERED:

The State Board of Education may, if it sees fit, augment the record and take additional evidence; it may apply its own rules or other procedures in conducting any hearing which it may see fit to conduct; and it may establish the time and place of such hearing to meet its own convenience.

IT IS FURTHER ORDERED that since the Board of Education is an agency of the state, no costs or attorney's fees are allowed.

Dated: December 28, 1961.

/s/ James M. Fitzgerald
James M. Fitzgerald, Judge

[Acknowledgement of service dated December 20, 1961 at 2:00 o'clock p.m.]

[Filed July 31, 1962.]

OPINION FOR STATE BOARD OF EDUCATION

Before the Appeal Committee, State Board of Education.	)	
In the Matter of the Non-Retention by the Seward School Board of Teachers Walter B. Blue and James V. Watts.	)	*OPINION*

The Superior Court for the Third Judicial District has reviewed the decision of the State Board of Education Appeal Committee entered May, 1961, and has by its mandate, directed that the Appeal Committee enter detailed conclusions and specify the findings of fact upon which it relies in making its conclusions.

The Appeal Committee did not find it necessary to hold additional hearings and it proceeded on the basis of the record which was already before it at the time of the previous decision, with the one exception that it issued an order requesting submission of additional evidence on the matter of the validity of Regulation E(7) of the Seward School Board.

The Superior Court concluded, as a matter of law, that two of the grounds for the non-retention of teachers Watts and Blue were not sufficient. Quoting from the court:

> "I conclude that, as a matter of law, the circulation by the petitioners of the Open Letter to the Seward School Board under date of May 18, 1960, is not immoral conduct within the meaning of the statute. I also conclude that, as a matter of law, the circulation of a petition seeking the recall of members of the Seward School Board is not immoral conduct within the meaning of the statute."

This leaves only three courses of conduct which would substantiate the non-retention of teachers Watts and Blue. These courses of conduct were:

1. That Watts was guilty of "immoral conduct" when he engaged in conferences with teachers Frampton and Richardson urging them to join in the circulation of an Open Letter and the conduct of a recall election against the School Board of Seward.
2. That Blue was guilty of "immoral conduct" on the occasion that he made a speech to the members of the ILWU at Seward.
3. That petitioners Watts and Blue were guilty of substantial non-compliance with the regulation previously adopted by the Seward School Board in that they circulated an Open Letter to the School Board without first submitting it through the School Superintendent.

I.

In respect to the first alleged course of misconduct, the Seward School Board made the following findings of fact, numbers 19, 20 and 21, which are quoted below:

> "19. On or about April 28, 1959, James Watts asked Mr. and Mrs. Benjamin Frampton, who at that time were members of the faculty of Seward Public Schools, if they would go along with a group of which Watts was a representative and whose purpose was to oust Mr. Fabricius from his job as Superintendent of schools. (The Board resolves the conflict in testimony between Mr. and Mrs. Frampton and Mr. Watts in favor of Mr. and Mrs. Frampton, crediting their testimony and discrediting that of Mr. Watts. This decision is based in part on the demeanor of the individuals.) (Transcript 12, 13, 20-21, 69-70.)
>
> "20. In the Spring of 1959, James Watts solicited Monty H. Richardson, who at that time was a school teacher in the Seward Public Schools, to join a group, the purpose of which was to get rid of Mr. Fabricius as Superintendent of Schools. (The School Board resolves the conflict in testimony between Mr.

Richardson and Mr. Watts in favor of Mr. Richardson, by crediting Mr. Richardson's testimony and discrediting the testimony of Mr. Watts. This decision is based in part upon the demeanor of the two witnesses.) (Transcript 22-4.)

"21. The conduct of James Watts described in findings 19 and 20 tended to bring the teaching profession into public disgrace and disrespect.

"22. The conduct of James Watts described in findings 19 and 20 tended to bring James Watts into public disgrace or disrespect."

The Appeal Committee finds that findings numbered 19 and 20 are supported by substantial evidence and they will not be disturbed on appeal.

The findings numbered 21 and 22 purport to be findings of fact. However, because they are couched in the statutory language and go to the ultimate fact in dispute they also have many of the elements of a conclusion of law.

The Appeal Committee affirms findings numbers 21 and 22 and rules that these communications between James Watts and teachers Frampton and Richardson did tend to bring James Watts and the teaching profession into public disgrace or disrespect and thus constituted "immorality" as defined by Sec. 2(2) Ch. 92, SLA 1960. This would, therefore, be a sufficient ground for the non-retention of Mr. James Watts.

II.

Concerning the second alleged course of misconduct, the Seward School Board made the following findings of fact:

"26. In an attempt to gain popular support for a recall vote involving the Seward Public School Board members, Walter B. Blue made a speech to the International Longshoremen and Warehousemen's Union in Seward, Alaska, in which he stated, 'We have been unable to get rid of the Superintendent, so we are going to get rid of the Board,' or words to that effect. (Board Exhibit 11; Transcript 48-9.)

"27. The conduct of Walter B. Blue described in finding 26 tended to bring the teaching profession into public disgrace or disrespect.

"28. The conduct of Walter B. Blue described in finding 26 tended to bring Walter B. Blue into public disgrace or disrespect."

Finding number 26 is predicated on Board Exhibit 11 and pages 48 and 49 of the transcript. Board Exhibit 11 is a transcript of the prior Seward School Board hearing held April 8, 1960. In that transcript is the testimony of one John Sadusky. At that hearing the Seward School Board was represented by Mr. Burr and teachers Watts and Blue by Mr. Walton. The following is an excerpt from the testimony of Mr. Sadusky:

"Mr. Boney: Did you recall hearing Mr. Blue make a statement that we have been unable to get rid of the Superintendent, Mr. George Fabricius, so we are now going to get rid of the Board?

"Mr. Walton: We register again our objection for the obvious reason that Mr. Boney is inviting the witness to testify the way Mr. Boney wishes him to.

"Mr. Boney: Do you recall any statement made by Mr. Blue?

"Mr. Sadusky: Yes. There was a statement made to the effect that - this is not the exact words - that they couldn't get rid of the Superintendent so they had to go after the School Board. I believe he said he hated to do it since Mr. Casey was a good friend of his and happened to be on the Board.

"Mr. Boney: Who made the statements to the meeting assembled?

"Mr. Sadusky: Mr. Blue did the talking."

Counsel for Mr. Blue has raised some questions as to the utility of Board Exhibit No. 11 for the reason that the testi-

mony contained in that exhibit was not taken under oath. However, because of the informality in the rules of evidence which is allowed in administrative proceedings and because the only objection made by counsel for Mr. Blue to the introduction of this Exhibit 11 was as to its bulkyness, the testimony of Mr. Sadusky taken at that prior hearing will be considered.

Pages 48 and 49 of the transcript indicate that Mr. Blue substantially denied making the statemnts which are alleged to him.

The Appeal Committee feels that the evidence contained in Board Exhibit 11 does constitute substantial evidence in support of Finding of Fact No. 26, and that finding will not be disturbed by the Appeal Committee.

The Appeal Committee concludes that the conduct of Walter B. Blue described in finding 26 most certainly did tend to bring both Mr. Blue and the teaching profession into public disgrace or disrespect. It is the conclusion of the Committee that such an inflamatory statement delivered at a public meeting by a teacher and directed at the teacher's superintendent and school board could have no other result.

III.

The third alleged course of misconduct as specified in Finding of Fact No. 9 was that:

> "9. The distribution of the Open Letter to the Seward School Board by teachers Watts and Blue was a violation of Regulation E(7) of the School Board Regulations."

If the violation of Regulation E(7) is to serve as a ground for non-retention, the regulation must, of course, be a valid regulation. On this subject the Seward School Board made the following finding of fact:

> "3. Board Exhibit 12 is a true and correct copy of all the School Board regulations of the Seward Public Schools which were in effect during the school

> years 1958 and 1959 and 1959 through 1960. Said regulations were adopted by the Seward School Board and put into force at least prior to January 1, 1959, although through an oversight, this was not reflected in the School Board minutes prior to that date. (Board Exhibit 13.)"

In an effort to find out if, in fact, the regulation had been duly adopted by the Seward School Board and if that adoption has been reflected in the minutes of the School Board, the Appeal Committee issued an order requiring submission of additional evidence. This order requested a certified copy of that part of the minutes of the Seward School Board which would indicate the date upon which Regulation E(7) was duly adopted.

Counsel for the Seward School Board replied to this order in the following manner:

> "As stated in Exhibit 13, the Seward School Board does not have in its possession the minutes reflecting the adoption by the Seward School Board of regulation E(7)."

The Appeal Committee holds that in the absence of an entry in the Seward School Board minutes of the adoption of Regulation E(7), the affidavit set forth in Exhibit 13 is adequate proof that Regulation E(7) was adopted by the Seward School Board and put into effect at least prior to January 1, 1959.

The Appeal Committee finds that there was sufficient evidence to support the finding that teachers Watts and Blue did distribute the Open Letter to the Seward School Board before submitting it to the Superintendent. The Appeal Committee affirms the finding of the Seward School Board that such distribution constituted substantial non-compliance with Regulation E(7). Thus, this conduct constitutes a proper ground for non-retention of both teachers Watts and Blue as provided by Subsec. (3), Sec. 2, Ch. 92, SLA 1960.

CONCLUSION

1. The non-retention of James Watts was proper for the reasons set forth in parts I and III of this opinion.

2. That the non-retention of Walter B. Blue was proper for the reasons set forth in parts II and III of this opinion.

Dated this 26th day of July, 1962.

/s/ William Moran
William Moran, Chairman
State Board of Education
Appeal Committee

[Filed August 14, 1962.]

SECOND PETITION FOR WRIT OF REVIEW

Petitioners above named move the Court for issuance of a Writ of Review directed to the Alaska State Board of Education requiring that agency to forward to the above Court for review the record of the proceedings held by that agency, as well as the record of the proceedings held by the Seward School Board, in connection with the non-retention of teachers Walter B. Blue and James A. Watts.

The decision of which review is sought is attached hereto marked Exhibit "A".

This petition is filed pursuant to the provisions of Rules 109-115, inclusive, Rules of Civil Procedure, and is based on the following representations:

1. In May of 1961 the State Board of Education, through its Appeal Hearing Committee, rendered a decision. From that decision a petition for writ of review was filed in this cause. On January 31, 1962, the Honorable James M. Fitzgerald, Judge of this Court, issued a Mandate directed to the State Board of Education (1) granting a review, (2) setting aside the decision of the State Board of Education entered on May 26, 1961, (3) remanding this proceeding and

this cause to the State Board of Education for the purpose of entering specific findings of fact and concrete conclusions of law on certain points.

2. Thereafter, after much delay and following the failure of the State Board of Education to comply with an order entered by this Court on January 31, 1962, requiring the State Board of Education to report to the Court as to what schedule it proposed to follow, the same Honorable James M. Fitzgerald on July 3, 1962, issued an Order to Show Cause directing the State Board of Education to show cause, if any there might be, why petitioners Watts and Blue should not be reinstated as teachers in the public school system of Seward, Alaska.

3. Finally, after having been served with said Order to Show Cause, a decision was entered by the State Board of Education on July 26, 1962, embodied in Exhibit "A" attached hereto. By that decision the respondent State Board of Education did affirm the findings of the Seward School Board to the effect that:

> (1) Petitioner Watts was guilty of "immoral conduct" when he engaged in conferences with fellow teachers Frampton on or about April 28, 1959, and when he engaged in a conversation with fellow teacher Richardson in the spring of 1959.
>
> (2) Petitioner Blue was guilty of "immoral conduct" when, on some occasion, he allegedly made a speech to the International Longshoremen and Warehousemen's Union at Seward, Alaska, and allegedly stated "we have been unable to get rid of the superintendent so we are going to get rid of the Board" (in connection with an appeal for public support of a petition for the recall of certain school board members).
>
> (3) Both petitioners Watts and Blue were guilty of violating an alleged regulation E (7) of the Seward School Board regulations.

However, the Board did not state specifically in what respect the said alleged regulation was supposedly violated.

1. *Petitioners Have No Right of Appeal or Alternative "Plain, Speedy or Adequate Remedy".*

The decision of which review is here sought was rendered on the basis of a hearing which the State Board of Education held over one year ago in compliance with the provisions of Chapter 92, Section 3 (c), SLA, 1960. This Section of the Code amended Section 37-5-13, ACLACS (Chapter 71, Section 3, SLA, 1957) to provide for a right of appeal from local school Board hearings. The 1960 Act did not provide for a right of appeal from the decision of the State Board of Education to the Superior Court of the State of Alaska. Hence, only through a Petition for Writ of Review can judicial review of the State Board of Education decision be secured.

2. *The Board of Education, Appeal Hearing Committee, Exercised Its Functions Erroneously and Arbitrarily and Exceeded Its Jurisdiction, With the Result that Petitioners Have Been Deprived of Property Without Due Process of Law.*

The conclusion that petitioner Blue was guilty of "immoral conduct" on the occasion that he made a speech to the members of the I.L.W.U. at Seward was based entirely on Board Exhibit 11, which was a transcript of the first Seward School Board hearing held on April 8, 1960. After that hearing was held, the Seward School Board affirmed its determination to non-retain petitioner Blue. From that decision petitoner Blue appealed to the State Board of Education and the State Board of Education reversed the Seward School Board. One of the grounds for reversal was that the hearing, evidenced by Board Exhibit 11, was not under oath.

It now appears that the State Board of Education desires to affirm action subsequently taken by the Seward School Board on the basis of the very evidence which it earlier rejected for not being under oath.

4. *The Findings of the Seward School Board Were Not Supported by "Substantial Evidence".*

The first conclusion of the respondent Board to the effect that petitioner Watts was guilty of "immoral conduct" when he allegedly:

> "On or about April 28, 1959, ... asked Mr. and Mrs. Benjamin Frampton, who at that time were members of the faculty of the Seward Public Schools, if they would go along with a group of which Watts is a representative and whose purpose was to oust Mr. Fabricius from his job as Superintendent of Schools."

was not only not supported by substantial evidence, but, even if it was, would not fulfill the statutory definition of "immoral conduct"—to-wit, conduct which tended to bring the teaching profession into public disgrace and disrespect.

What one teacher might say to two other fellow teachers in the privacy of their own room, in our opinion, could not conceivably be the type of conduct which the Legislature ordained should be so "immoral" as to justify the expulsion of a teacher from a school system. A conclusion of this effect is arbitrary, capricious, and not supported by substantial evidence.

Our same argument would apply to the conversation allegedly had between Mr. Watts and fellow teacher Richardson in the Spring of 1959 when, allegedly, Mr. Watts asked Mr. Richardson:

> ". . . to join a group, the purpose of which was to get rid of Mr. Fabricius as Superintendent of schools."

We fail to see, even if this were true, how such an invitation could conceivably constitute:

> "Conduct tending to bring the teaching profession into public disgrace and disrespect."

or how such conduct could conceivably "tend to bring James Watts into public disgrace or disrespect". For this reason,

such a finding and such a conclusion of law is capricious, arbitrary, and not supported by substantial evidence.

The third conclusion of the State Board of Education was to the effect that both petitioners were guilty of violating an alleged School Board regulation. The respondent Board has failed to state in its decision of July 26, 1962, wherein the petitioners were guilty of "violating" the regulation. That is to say the respondent Board has made no finding of fact as to what the petitioners may or may not have done which would constitute a violation of such a regulation. For this reason, the action of the Board in failing to enter such an essential finding necessary to support its decision entitles the petitioners to review of that portion of the decision.

Furthermore, the State Board of Education, in reaching such a conclusion, has wholly gone beyond the scope of the testimony adduced at the Seward School Board and its decision is accordingly wholly unsupported by any substantial evidence and is arbitrary and capricious.

The Board of Education rests its decision, on this point, on an Exhibit 12 which purports to be Regulations of the Seward School Board. One of the factual issues raised in the Seward School Board hearing, and again raised before the Appeal Hearing Committee, was whether or not the document identified as Exhibit 12 did in fact represent regulations which were duly promulgated and adopted by the Seward School Board. At all times throughout the history of this litigation, the petitioners have adamantly denied that such regulations ever were adopted by the Seward School Board, least of all the so-called regulation E (7). The respondent Board has rested its decision on a spurious affidavit being Exhibit 13. Exhibit 13 was an affidavit signed by four Board members. This Affidavit was executed on November 2 of 1960. That Affidavit represented that the Seward School Board Regulations, all of which were supposedly contained in Exhibit 12, were all adopted "prior to January

1, 1959". The worthlessness of such an Affidavit was pathetically demonstrated by the fact that some pages of Exhibit 12 show on their face that portions of the so-called regulations were adopted *after* January 1, 1959.

For example, Section III-A was adopted on February 16, 1959, as is shown on the face of Exhibit 12. Likewise, Section III-C was adopted on March 10, 1959. And, finally, although other sections of Exhibit 12 *do* show that portions *were* adopted by the Seward School Board at certain times, no such notation follows at all the supposed regulation Section E-7.

At this point we refer the Court to our Memorandum which was prepared for the State Board of Education, Appeal Hearing Committee, and which has been filed herein with the first Petition for Writ of Review filed in this cause. It therefore appears that the State Board has chosen to rest its entire conclusion (that is, pertaining to violation of regulations) on the supposition that an Affidavit which is on its face incorrect was nevertheless true.

5. *The Respondent State Board of Education Was Arbitrary and Capricious.*

The State Board of Education even appealed to the Seward School Board for a certified copy of the Minutes showing the adoption of supposed Regulation E-7. The Seward School Board confessed that no such Minutes were possessed by it. Nevertheless, the Seward School Board has now been affirmed on that point on the basis of an Affidavit, the makers of which were not subjected to cross-examination. Petitioners vehemently object to the introduction into evidence of the Affidavit, Exhibit 13, when at the hearing the petitioners were denied the opportunity to cross-examine the affiants in question. Yet those affiants were present and were available for cross-examination on the subject.

6. *The Petitioners' Claims Are Such That Justice Demands an Immediate Review of the Decision in Question.*

The petitioners are by profession and training teachers.

They have lived at Seward for many years, one of the petitioners has lived there for his entire life-time. Their right and opportunity to pursue their chosen profession and to continue to do so in the area of their homes and their families is now at stake.

Petitioners seek the following relief: That the decision rendered by the State Board of Education on July 26, 1962, be held for naught and that petitioners be ordered reinstated.

Finally, petitioners incorporate herein by reference, as though fully set forth, the entire contents of their Memorandum and Citation of References which was filed with the State Board of Education at the conclusion of that Agency's hearing, as well as those portions of the First Petition for Writ of Review filed herein to the extent that arguments therein made were not rejected by the Court in its Mandate of July 31, 1962.

Respectfully submitted this 14th day of August, 1962.

CONNOLLY & WALTON

By /s/ Peter B. Walton
Peter B. Walton

[Certified of Service dated August 14, 1962.]

[Filed September 13, 1963.]

ORDER DENYING SECOND PETITION FOR WRIT OF REVIEW

The Second Petition for Writ of Review filed herein was argued before me on August 30, 1963; Peter B. Walton, Esq., appearing for petitioners James A. Watts and Walter B. Blue, Theodore Pease, Esq., appearing for respondent Seward School Board; and the court having considered arguments of counsel and the memoranda filed herein as well as exhibits referred to therein,

IT IS HEREBY ORDERED that the Second Petition for Writ of Review be and it hereby is denied.

DATED this 13th day of September, 1963.

/s/ Hubert A. Gilbert
Judge

[Acknowledgement of Service dated September 12, 1963 at 9:05 o'clock A.M.]

[Filed September 24, 1963.]

NOTICE OF APPEAL

PLEASE TAKE NOTICE that petitioners James A. Watts and Walter B. Blue do hereby file their Notice of Appeal from that certain Order entered on September 13, 1963, by the Honorable Hubert A. Gilbert entitled "ORDER DENYING SECOND PETITION FOR WRIT OF REVIEW".

This appeal is taken to the Supreme Court of the State of Alaska.

DATED this 24th day of September, 1963.

CONNOLLY, WALTON & HAMMOND

By /s/ Peter H. Walton
Peter H. Walton

[Filed September 21, 1964.]

File No. 427

JUDGMENT

This matter was considered by the court on appeal from the Superior Court of the State of Alaska, Third Judicial District, at Anchorage.

It Is ORDERED:

The order of the superior court, entered September 13, 1963, is affirmed.

Dated: September 21, 1964.

/s/ Buell A. Nesbett
Chief Justice

/s/ John H. Dimond
Associate Justice

/s/ Harry O. Arend
Associate Justice

[Filed August 21, 1964.]

File No. 427

OPINION

[No. 251 - September 21, 1964]

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Hubert A. Gilbert, Judge.

Appearances: Peter B. Walton, of Connolly, Walton & Hammond, Anchorage, for Appellants, Theodore M. Pease, Jr., of Burr, Boney & Pease, Anchorage, for Appellees.

Before: Nesbett, Chief Justice, Dimond and Arend, Justices.

AREND, Justice.

The appeal in this case is from an order of the superior court denying a petition for review from the decision of the Alaska State Board of Education which affirmed the ruling of the Seward School Board that the appellants should not be retained in their position as school teachers at Seward, Alaska.

In March of 1960 the Seward School Board notified the appellants that it had decided not to retain them as teachers in the school system for the next school year, primarily on grounds of immoral conduct. At the request of the appellants a hearing was held before the School Board in April of 1960. This resulted in the Board affirming its previous decision. The appellants then appealed to the State Board of Education which, after a hearing during the summer of 1960, remanded the case to the School Board for a new hearing and with directions to enter findings of fact and conclusions of law on any action taken. The School Board heard the case again in the fall of 1960, reaffirmed its first decision and later entered findings of fact in support of its action.

The appellants appealed a second time to the State Board and that body in May of 1961 once more affirmed the decision of the School Board but without stating the basis for its ruling. The following month the appellants filed a petition for review in the superior court, attacking, for one thing, the failure of the State Board to enter findings of fact and conclusions of law to support its decision. Judge Fitzgerald of the superior court held a hearing on the petition and thereafter remanded the case to the State Board "to make specific findings of fact and enter concrete conclusions" of law. Without holding any further hearings, the State Board responded to the court's mandate on July 31, 1962, by rendering an opinion which sustained the School Board's nonretention of the appellant teachers, on two findings of immoral conduct and one of noncompliance with School Board Regulation E-7 regarding the channeling of complaints by school employees to the School Board.

In August of 1962 the appellants filed a second petition for review in the superior court alleging that the State Board acted arbitrarily and capriciously in that its findings and conclusions were not supported by substantial evidence. The petition was heard by Judge Gilbert who denied it summarily, without oral or written opinion and without setting

forth any findings. The appellants have now appealed to this court and charge that the superior court erred in failing to vacate and reverse the State Board's decision of July 31, 1962.

The immoral conduct complained of as to the appellant Watts was his holding of private conversations with various teachers in which he solicited their support in an attempt to oust the school superintendent from his job. The allegedly immoral conduct of the appellant Blue was his making of a speech to a labor union at Seward in which he stated, "We have been unable to get rid of the [school] Superintendent, so we are going to get rid of the Board," or words to that effect.

The appellants contend that to justify the discharge of a school teacher on grounds of immorality he must be shown to have conducted himself in a manner that would normally shock the conscience of good men and be sufficiently notorious to impair his services as a teacher in the community. To illustrate this concept of immorality the appellants draw examples from case law in which it was held to constitute immoral conduct for a teacher to imbibe intoxicating liquor on the school premises and offer it to students;[1] to misappropriate school funds;[2] to work as a cocktail waitress in a beer garden and, in the presence of school pupils, to drink beer, play a pinball machine and shake dice with customers for drinks;[3] or to make false statements as in a loyalty oath affidavit.[4]

In none of the cases cited by the appellants did the legislatures in authorizing school boards to dismiss teachers for

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[1]Tracy v. School Dist. No. 22, 70 Wyo. 1, 243 P.2d 932 (1952).

[2]Appeal of Flannery, 406 Pa. 515, 178 A.2d 751 (1962).

[3]Horosko v. School Dist., 335 Pa. 369, 6 A.2d 866, *cert. denied*, 306 U.S. 553, 84 L. ed. 465 (1939).

[4]Negrich v. Dade County Bd. of Pub. Instruction, 143 So. 2d 498 (Fla. Dist. Ct. App. 1962).

immorality define that term. This left the courts concerned free to place their own construction upon the word having regard, of course, to the context in which the legislature used it. Thus a New Jersey court stated:

> "Immorality" is not necessarily confined to matters sexual in their nature. In a given context the word may be construed to encircle acts which are *contra bonos mores,* inconsistent with rectitude and the standards of conscience and good morals. Its synonyms are: corrupt, indecent, depraved, dissolute; and its antonyms are: decent, upright, good, right. Webster's International Dict. (2d ed.) [Italics in the original.][5]

The Alaska legislature, however, has seen fit to define "immorality." In providing for notification by the school board to an administrator or teacher of nonretention, "together with a clear statement of cause . . . for such nonretention,"[6] the legislature declared:

> The term "cause . . . shall be based solely upon: (a) Incompetency . . .; or (b) *Immorality which is defined as conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect;* or (c) Substantial non-compliance with the school laws . . . or . . . regulations . . . .[7] [Emphasis supplied.]

It is evident from the legislature's definition of immorality that it did not confine the meaning of the term to conduct which would normally shock the conscience of good men or offend the morals of the community—definitions urged upon us by the appellants. Instead, the legislature

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[5] Appeal of Schneider, 12 N.J. Super. 449, 79 A.2d 865, 870 (App. Div. 1951).

[6] § 37-5-11 ACLA Cum. Supp. (1957) [Now AS 14.20.140 and 14.20.150].

[7] § 37-5-12 ACLA Cum. Supp. (1957) [Now AS 14.20.170].

adopted a much broader meaning for the word "immorality" as cause for the nonretention of a school teacher, for it stated that "immorality" should encompass any "conduct of the person tending to bring the individual concerned . . . into public disgrace or disrespect."

In the case at bar the Seward School Board found that the appellant Watts had solicited other teachers to join in an attempt to oust the school superintendent from his job and that Watts' conduct tended to bring him and the teaching profession into public disgrace or disrespect. They made a similar finding with respect to the conduct of the appellant Blue in making the speech to the labor union about getting rid of the School Board. The State Board of Education affirmed these findings and concluded that the conduct of the appellants constituted immorality as defined in the statute and provided sufficient grounds for their nonretention. The State Board further found that there was substantial evidence to support the School Board's findings.

Although there was some conflict in the testimony and although the appellants claim that the trial court should have reversed and vacated the decision of the State Board as not being supported by substantial evidence and as being contrary to law, we fail to find any error committed in the proceedings below. The School Board was the original fact finder and there was substantial evidence in the record to sustain their findings and the additional findings and legal conclusions of the State Board.

In our opinion the tactics shown to have been employed by the appellants to get the school superintendent and members of the School Board removed from their positions of responsibility in the community had a tendency to bring the appellants and the teaching profession into public disgrace or disrespect and sustained the administrative agency findings to that effect.[8]

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[8]See Keiner v. City of Anchorage, 378 P.2d 406 (Alaska 1963), in which we held at page 411 that the findings of an administrative

We agree with the statement made by the court in *Horosko v. School District*[9] that

> It has always been the recognized duty of the teacher to conduct himself in such way as to command the respect and good will of the community, though one result of the choice of a teacher's vocation may be to deprive him of the same freedom of action enjoyed by persons in other vocations. . . .[10]

We find it unnecessary to rule on the finding below that further cause for nonretention of the appellants was their alleged noncompliance with the School Regulation E-7 set forth in the margin.[11] However, for the guidance of those in the teaching profession we suggest that it will be in the best interests of the school children, the teachers and the community generally for teachers with grievances to follow an orderly procedure of seeking redress first at the superintendent level and then at the school board level.

The appellants voiced a broad and general claim in their brief on appeal that their constitutional rights to assemble

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agency should not be reversed "if in the light of the whole record they are supported by substantial evidence, i.e., such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

[9] 335 Pa. 369, 6 A.2d 866, *cert. denied*, 306 U.S. 553, 84 L. ed. 465 (1939).

[10] *Id.* at 868.

[11] Regulations E-7 of section I of the Seward School Board regulations provides as follows: "Grievances, complaints and communications from employees shall be submitted to the Board through the Superintendent. Any employee or group of employees may at any time appeal to the Board."

Another regulation, E-9, states that "Employees or groups of employees desiring to address the Board shall address their communication to the Superintendent and not to individual members of the Board, except that copies of any communication may be sent to all Board members."

and speak freely have been abridged in this case and that they have been deprived of their personal liberties and property rights without due process of law. They treat the subject in a very cursory fashon and cite us to no case law in support of their claim. Under these circumstances we need not consider the point.

For the foregoing reasons the order of the superior court denying the appellants' second petition for review is affirmed.

[Filed October 2, 1964.]

File No. 427

MANDATE

To: Superior Court of the State of Alaska,
Third Judicial District, at Anchorage.

James A. Watts and Walter B. Blue filed an appeal from a judgment of the Superior Court, Third Judicial District, at Anchorage, in Civil Action No. 61-728, entitled "JAMES A. WATTS and WALTER B. BLUE, Petitioners, vs. SEWARD SCHOOL BOARD and BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, Respondents." The case was heard by this court on April 20, 1964. On September 21, 1964, the court filed its written opinion and entered judgment affirming the judgment of the superior court.

It Is ORDERED:

1. The judgment of the superior court, entered September 13, 1963, is affirmed.

2. Appellees shall recover from appellants costs and attorney's fees as shown below.

WITNESS The Honorable Buell A. Nesbett, Chief Justice of the Supreme Court, State of Alaska, this 2nd day of October, 1964.

Costs and Attorney's Fees:

Duplicating Appellees' Brief	$ 102.50
Attorney's Fees	300.00
Total	$ 402.50

JOSEPHINE M. McPHETRES
Clerk, Supreme Court,
State of Alaska

[SEAL]

SUPREME COURT OF THE UNITED STATES

WATTS ET AL. *v.* SEWARD SCHOOL BOARD ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ALASKA.

No. 923. Decided May 3, 1965.

PER CURIAM.

Petitioners Watts and Blue were dismissed from their positions as school teachers in Seward, Alaska, on grounds of "immorality," which under Alaska Statute § 14.20.170 was defined as "conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect." Petitioner's dismissal was upheld by the Alaska Superior Court (Third Judicial District), and on appeal the Alaska Supreme Court affirmed the Superior Court's decision. 395 P. 2d 372. The Alaska Supreme Court noted that "[t]he immoral conduct complained of as to the appellant Watts was his holding of private conversations with various teachers in which he solicited their support in an attempt to oust the school superintendent from his job. The allegedly immoral conduct of the appellant Blue was his making of a speech to a labor union at Seward in which he stated, 'We have been unable to get rid of the [school] Superintendent, so we are going to get rid of the Board,' or words to that effect." 395 P. 2d, at 374. The Alaska Supreme Court held that this conduct "had a tendency to bring the [petitioners] .... and the teaching profession into public disgrace or disrespect," within the terms of the statute, 395 P. 2d, at 375, and it therefore sustained their dismissal. Petitioners contend that their dismissal for engaging in the conduct here described unconstitutionally infringes their rights to political expression guaranteed by the First and Fourteenth Amendments to the United States Constitution.

[Filed May 6, 1965]

We need not consider petitioners' contentions at this time, for since their petition for certiorari was filed Alaska has amended its statutes in this area. House Bill 27, adopted by the Alaska Legislature and signed by the Governor on March 31, 1965, now defines "immorality" as grounds for revocation of a teaching certificate, as "the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude." Moreover, Alaska statute § 14.20 has been amended by the addition of a new section which reads:

> "Sec. 14.20.095. Right to Comment and Criticize Not to be Restricted. No rule or regulation of the commissioner of education, a local school board, or local school administrator may restrict or modify the right of a teacher to engage in comment and criticism outside school hours, relative to school administrators, members of the governing body of any school or school district, any other public official, or any school employee, to the same extent that any private individual may exercise the right."

This Court has held that supervening changes in state law that may be relevant to the disposition of a case may require that the cause be remanded for appropriate action by the state court. See, *e. g.*, *Missouri ex rel. Wabash R. Co.* v. *Public Service Comm'n*, 273 U. S. 126, 131. Cf. *Trunkline Gas Co.* v. *Hardin County*, 375 U. S. 8. Accordingly, it is appropriate to allow the Alaska court to consider the effect of the new Alaska statutes upon this case. To that end, the petition for certiorari is granted, the judgment of the Supreme Court of Alaska is vacated, and this case is remanded to that Court for such further consideration as may be deemed appropriate by that Court under Alaska law.

Vacated and remanded.

[Filed June 3, 1965]

UNITED STATES OF AMERICA, SS:
THE PRESIDENT OF THE
UNITED STATES OF AMERICA

[Seal]

To the Honorable the Judges of the Supreme Court of the State of Alaska,

GREETINGS:

WHEREAS, lately in the Supreme Court of the State of Alaska, there came before you a cause between James A. Watts and Walter B. Blue, appellants, and Seward School Board and Board of Education, Appeal Hearing Committee, appellees, No. 427, wherein the judgment of the said Supreme Court was duly entered on the 21st day of September A.D. 1964, as appears by an inspection of the transcript of the record of the said Supreme Court which was brought into the SUPREME COURT OF THE UNITED STATES by virtue a writ of certiorari, as provided by act of Congress.

AND WHEREAS, in the October Term, 1964, the said cause came on to be heard before the SUPREME COURT OF THE UNITED STATES on the said transcript of record:

ON CONSIDERATION WHEREOF, it was ordered and adjudged on May 3, 1965, by this Court that the judgment of the said Supreme Court in this cause be vacated with costs, and that this cause be remanded to the Supreme Court of the State of Alaska for further consideration not inconsistent with the opinion of this Court.

IT WAS FURTHER ORDERED that James A. Watts, et al., recover from the Seward School Board et al. One Hundred Dollars ($100) for their costs herein expended.

NOW, THEREFORE, THE CAUSE IS REMANDED to you in order that such proceedings may be had in the said cause,

in conformity with the judgment of this Court above stated, as accord with right and justice, and the Constitution and laws of the United States, the saie writ notwithstanding.

Witness the Honorable EARL WARREN, Chief Justice of the United States, the twenty-eighth day of May, in the year of our Lord one thousand nine hundred and sixty-five.

Costs of James A. Watts et al.:
Clerk's costs $100

/s/ JOHN C. DAVIS
Clerk of the Supreme Court
of the United States

[Filed June 3, 1965]

ORDER ALLOWING CERTIORARI
[Filed May 3, 1965]

The petition herein for a writ of certiorari to the Supreme Court of the State of Alaska is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Seal]

/s/ JOHN C. DAVIS
Clerk of the Supreme Court
of the United States

A true copy
Test:

[Filed December 7, 1966.]

File No. 427

JUDGMENT

This matter was considered by the court on remand from the Supreme Court of the United States for reconsideration in the light of Alaska statutes enacted subsequent to this court's original decision.

It Is ORDERED:

1. That the Seward School Board's conclusion that appellants were guilty of substantial noncompliance with Board Regulation E(7) is affirmed as a separate and independent cause for their nonretention.

2. That the Seward School Board's original conclusion that appellants were guilty of immorality within the meaning of the statute as it then defined that term, for their part in compiling, reproducing and distributing the Open Letter containing false statements disparaging of the Superintendent is affirmed as a cause for their nonretention.

3. That the Seward School Board's conclusion that appellant Watts was guilty of immorality, as it was then defined by statute, for his activities in soliciting teachers to join in a private move to oust the Superintendent is affirmed as a cause for his nonretention.

4. That the Seward School Board's conclusion that appellant Blue's speech to the longshoremen's union constituted immorality, as it was then defined by statute, is set aside for not being supported by substantial evidence.

Dated: December 7, 1966.

/s/ Buell A. Nesbett
Chief Justice

/s/ John H. Dimond
Associate Justice

Associate Justice

File No. 427

OPINION

[No. 380 - December 7, 1966]

On remand from the Supreme Court of the United States for reconsideration, in the light of Alaska statutes enacted subsequent to this court's original decision.

Appearances: Joe P. Josephson, Josephson & Strachan, Anchorage, for Appellants. Warren W. Matthews, Jr., Burr, Boney & Pease, Anchorage, for Appellees.

Before: Nesbett, Chief Justice, Dimond and Rabinowitz, Justices.

NESBETT, Chief Justice.

This case is before us for the second time.

In our Opinion No. 251 of September 21, 1964,[1] we upheld the action of appellee Seward School Board in refusing to renew appellants' teaching contracts in the Seward Public Schools for 1959-60 on the ground that appellants had engaged in immoral conduct within the statutory definition of that term in SLA 1957, chapter 71, section 2.[2] We noted

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[1] 395 P.2d 372 (Alaska 1964).

[2] SLA 1957, chapter 71, section 1 provided that teachers whose contracts were not to be renewed for the following year should be notified in writing on or before March 15 with a clear statement of cause including a bill of particulars.

SLA 1957, chapter 71, section 2, as amended, stated:

Definition of Cause: The term 'cause' as used in section I above shall be based solely upon:
(a) Incompetency which is defined as the inability or the unintentional or intentional failure to perform one's legitimate duties in a satisfactory manner; or (b) Immorality which is defined as conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect; or (c) Substantial noncompliance with the school laws of the Territory or such regulations of the Territorial Board of Education or any other governmen-

in that opinion that although appellants had made the broad general claim in their brief that their constitutional rights to assemble and speak freely had been abridged and that they had been deprived of their personal liberties and property rights without due process of law, they had failed to treat the matters adequately in their briefs or to cite any case law in support thereof. Accordingly, we declined to attempt to pass on those points.[3]

Appellants petitioned the United States Supreme Court for a writ of certiorari contending that their dismissal amounted to an unconstitutional infringement of their rights to political expression guaranteed by the First and Fourteenth Amendments to the United States Constitution.

Subsequent to the publication of our Opinion No. 251 the Alaska Legislature in 1965 enacted AS 14.20.095 providing that no rule or regulation of certain education officials may restrict or modify a teacher's right to comment and criticize public education officials, outside of school hours, to the same extent that a private individual might do so.[4] In addition, the Alaska Legislature in 1965 amend-

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tal agency as are applicable or of the employing school district; except, that any necessary reduction of staff occasioned by a decrease in school attendance of the district may warrant, in the absence of any of the above reasons, the non-retention of a teacher.

Since recodification of Alaska laws this section has become AS 14.20.170.

[3]No claim of infringement of constitutional rights had been included in appellants' statement of points nor in their specifications of error.

[4]AS 14.20.095 states:

Right to comment and criticize not to be restricted. No rule or regulation of the commissioner of education, a local school board, or local school administrator may restrict or modify the right of a teacher to engage in comment and criticism outside school hours, relative to school administrators, members of the governing body of any school or school district, any other public official, or any school employee, to the same extent that any private individual may exercise the right.

ed the statute which stated the causes for which a teacher's certificate might be revoked. Insofar as is pertinent this amendment simply added a definition of "immorality", defining it as the commission of an act which, under the laws of the state, constitute a crime involving moral turpitude.[5]

In its per curiam decision remanding the case,[6] the United States Supreme Court cited the decisions noted below which hold that supervening changes in state law that may be relevant to the disposition of a case may require that the cause be remanded for appropriate action by the state court,[7] and stated that it was granting certiorari for that purpose.

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[5]Before amendment, AS 14.20.090 stated:

Revocation of certificates. (a) The department may revoke a certificate for any of the following causes:

(1) immorality,

(2) violation of written contract,

(3) intemperance,

(4) crime against the laws of the state, or

(5) unprofessional conduct.

(b) No certificate may be revoked until the accused has been given an opportunity to be heard. (§ 37-5-10 ACLA 1949)

AS 14.20.090, as amended by SLA 1965, chapter 41, now reads:

Causes for revocation. The department may revoke a certificate for any of the following causes:

(1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform the teachers customary duties in a satisfactory manner;

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude;

(3) substantial noncompliance with the school laws of the state or the regulations of the department.

[6]Watts v. Seward School Board, 381 U.S. 126, 14 L.Ed.2d 261, (1965).

[7]Missouri *ex rel.* Wabash Ry. Co. v. Public Service Comm'n, 273 U.S. 126, 131, 71 L.Ed. 575, 577 (1927). Cf. Trunkline Gas Co. v. Hardin County, 375 U.S. 8, 11 L.Ed.2d 38 (1963).

We have for our assistance in reconsidering the case, the original briefs submitted by the parties, as well as additional briefs submitted at the request of this court subsequent to remand. Also to be considered at this time is the fact that since the last time the briefs were filed herein and on the 15th day of April 1966, the Alaska Legislature enacted an amendment to AS 14.20.170 (2) redefining immorality as a ground for non-retention of a teacher as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude.[8]

In preparation for reconsideration of the case we requested that counsel brief the question of whether appellants' dismissal from their positions as school teachers infringed upon their rights to political expression guaranteed by the First and Fourteenth Amendments to the United States Constitution, as well as the effect on the case of the statutory changes mentioned by the United States Supreme Court in granting certiorari.

Counsel have obliged. In addition, appellants have requested that the appeal be considered de novo in the light of recent United States Supreme Court decisions. Appellee has again briefed and urged us to determine the question of whether the Seward School Board's conclusion that appellants had substantially failed to comply with Seward School Board Regulation E(7) was not a sufficient independent cause for their nonretention. Although this point was briefed and presented when this case was last before us, we found it unnecessary to consider it in view of the disposi-

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[8]This amendment, SLA 1966, chapter 104, states in part that:

. . . AS 14.20.170(2) is repealed and re-enacted to read:

(2) immorality, which is defined as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude . . . .

tion then made of the case. We shall consider and pass on it in this decision.

In our reconsideration of the case it was eventually found necessary to order the record supplemented by the transcripts of the various proceedings had before the Seward School Board and the State Board of Education, Appeals Committee, as well as all of the exhibits received at those hearings. These transcripts were received late in May and the exhibits on June 10, 1966.

We shall consider first the effect subsequent statutory changes may have had upon our original holding that appellants' conduct was immoral within the meaning of Alaska's statute.

In order to consider this question in perspective it is necessary to first determine the type of conduct the legislature originally intended to cover by its definition of "immorality".

The use of the term by the legislature must be considered in context. When the facts of this case arose in 1959, SLA 1957, chapter 71, section 2,[9] listed and defined the three causes for which a teacher could be nonretained as:

> (a) Incompetency - defined as the inability or failure to satisfactorily perform one's duties,
>
> (b) Immorality - defined as 'conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect', and
>
> (c) Substantial noncompliance with the school laws of the Territory or regulations of the Territorial Board of Education.

Of the three causes for nonretention, "incompetency" and "substantial noncompliance" are reasonably specific. "Immorality", on the other hand, is broad and covers any

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[9]Subsequently, the subject matter of AS 14.20.170. See also Section 37-5-12 ACLA Cum. Supp. 1958.

and all conduct of the teacher which tends to bring disgrace or disrespect upon the teacher or the teaching profession. This definition would include all conduct from the commission of the most heinous felony down the scale of infamy to social misbehavior. The point in a teacher's conduct beyond which his behavior would tend to bring disgrace or disrespect upon him or his profession, would be one of degree depending upon the rules of society and to some extend upon the mores of the particular community.

Since it does cover such a broad range of conduct, it seems quite likely that the Alaska Legislature originally intended that "immorality" be a "catch-all" cause for nonretention, intended to serve the same purpose as that mentioned in *Beilan v. Board of Education*[10] where the United States Supreme Court stated in 357 U.S. at 406, 2 L.ed.2d at 1420:

> However, the Pennsylvania statute, unlike those of many other States, contains no catch-all phrase, such as 'conduct unbecoming a teacher,' to cover disqualifying conduct not included within the more specific provisions. Consequently, the Pennsylvania courts have given 'incompetency' a broad interpretation.

In a footnote the court cited the "catch-all" provisions of the Kentucky statutes, as being "conduct unbecoming a teacher" and "during good behavior"; of Massachusetts as "conduct unbecoming a teacher" and "other good cause"; of California as "evident unfitness for service" or "unprofessional conduct"; of Illinois as "other sufficient cause" and of Indiana as "other good and just cause".[11]

The propriety of defining "immorality" as the legislature did has been questioned indirectly by appellants in their briefs and directly by the Alaska Legislative Council in an annual report to the legislature. The Council pointed out

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[10] 357 U.S. 399, 2 L.Ed.2d 1414 (1958).

[11] *Id.* at 406, N. 8, 2 L.Ed.2d at 1420.

that the removal of a teacher for immoral conduct has serious implications for the teacher and suggested amendment of the provision by substitution of a definition of "immoral" in keeping with the commonly accepted sense of the term.[12]

If the original intent of the Alaska Legislature in defining immorality as it did was to provide a "catch-all" provision covering all types of conduct tending to bring public disgrace or disrespect upon the teacher or his profession, not covered by "incompetency" and "substantial noncompliance" with regulations, as seems likely, and it is desired to remove any possibility of unnecessary stigma from attaching by reason of the title of the provision, then it would seem that the reverse of the Legislative Council's recommendation should be followed. That is, the designation or title of immorality should be removed from the catch-all definition of conduct and a designation such as "conduct unbecoming a teacher" be substituted. The definition would then cover immorality in all of its aspects, including all shades of unacceptable social misbehavior, and would continue to serve the useful purpose of a "catch-all" cause which so many states have found to be a necessity in this area of legislation.[13]

The use of the term "immorality" is not new to legislation governing the teaching profession. In *Appeal of Batrus*[14] a statute provided that the only valid causes for termination

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[12]"Legislative Oversight of the Administration of Statutes" p. 21-23.

[13]In Board of Education v. Swan, 41 Cal. 2d 546, 261 P.2d 261, 266 (1953), *cert. denied*, 347 U.S. 937, 98 L.Ed. 1087 (1954) the court was considering California's "catchall" cause of "unprofessional conduct" and quoted from Goldsmith v. Board of Education, 66 Cal. App. 157, 168, 225 P. 783, 787 (1924) in part as follows:

> 'the calling (of a teacher) is so intimate, its duties so delicate, the things in which a teacher might prove unworthy or would fail are so numerous, that they are incapable of enumeration in any legislative enactment.'

261 P.2d at 266. See text accompanying note 58 *infra* for full quote.

[14]148 Pa. Super. 587, 26 A.2d 121 (1942).

of a teacher's contract were: immorality, incompetency, intemperance, cruelty, persistent negligence, mental derangement and persistent and wilful violation of school laws. The court held that where a teacher executed false affidavits, misrepresented and withheld important information from her employer she was guilty of

> . . . 'such a course of conduct as offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and elevate' and therefore immoral.[15]

In *Negrich v. Dade County Bd. of Pub. Instruction*[16] a teacher has made a false statement in his application for a teaching position and was suspended therefor seven years later. The court held that the conduct amounted to immorality since it ". . . offends the morals of the community and was inconsistent with moral rectitude".[17] In our first opinion we mentioned *Appeal of Schneider*,[18] where the court said:

> 'Immorality' is not necessarily confined to matters sexual in their nature. In a given context the words may be construed to encircle acts which are *contra bonos mores*, inconsistent with rectitude and the standards of conscience and good morals. Its synonyms are: corrupt, indecent, depraved, dissolute; and its antonyms are: decent, upright, good, right. Webster's International Dict. (2d ed.)[19]

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[15] 26 A.2d at 124.

[16] 143 So. 2d 498 (Fla. App. 1962).

[17] 143 So. 2d at 501.

[18] 12 N.J. Super. 449, 79 A.2d 865 (App. Div. 1951).

[19] 79 A.2d at 870. For other cases construing immorality see: Tracy v. School Dist. No. 22, 70 Wyo. 1, 243 P.2d 932 (1952) (imbibing liquor on school premises); Appeal of Flannery, 406 Pa. 515, 178 A.2d 751 (1962) (misappropriating funds); and Horosko v. School Dist., 335 Pa. 369, 6 A.2d 866, *cert. denied*, 308 U.S. 553, 84 L.Ed. 465 (1939).

In any event, the choice of the designation of "immorality" as a cause for nonretention was the legislature's. For the purposes of this case we must accept that designation and the legislative definition provided. We pass now to consider whether the conduct which the Seward School Board found that appellants had engaged in was such that it tended to bring appellants or the teaching profession into public disgrace or disrespect. In this connection we have reviewed the transcripts of the various proceedings had before the Seward School Board and the Board of Education, Appeals Committee.

The controversy was set off by letters from the Seward School Board to appellants containing notices of nonretention and bills of particulars which were delivered in March of 1960. Appellants were advised that one of the reasons for their nonretention was that they were guilty of acts of immorality tending to bring them and the teaching profession into disgrace of disrespect by:

(1) Assisting in the printing and distribution of false, distorted, and misleading statements against the Superintendent of the Seward Public Schools with the intent of injuring his professional standing and destroying community and pupil confidence in the administration of the schools.

(2) By carrying to the people of the community and personally signing a petition for recall of the Seward School Board on false charges.

(3) By appearing before a union meeting in Seward and making false and misleading statements relating to the actions of the Seward School Board and making a statement similar to:

"We have been unable to get rid of the Superintendent, so we are going to get rid of the Board." (Applicable to Appellant Blue only.)

(4) By taking part in and encouraging clandestine activities of teachers with the purpose of ousting the Superintendent. (Applicable to Appellant Watts only.)

Appellants appealed their notices of nonretention. At the hearing held before the Seward School Board on April 8, 1960 both sides were represented by counsel and the entire hearing was recorded and transcribed. Both appellants admitted taking part in the printing and distribution of an Open Letter to the Seward School Board, introduced as Exhibit 7, and which reads as follows:

Seward, Alaska
May 18, 1959

AN OPEN LETTER TO THE SEWARD SCHOOL BOARD
Seward, Alaska

Gentlemen:

A Seward Branch of the American Federation of Teachers, affiliated with the AFL-CIO, has applied for and received confirmation of its charter. The AFT is a recognized organization of professional teachers and thereby commands recognition by the Seward School Board.

The Seward Local takes this means of informing the Seward School Board (and the public) of our stand in the current struggle for a good school. We hold that incidents occuring during the last year have reached such proportions as to be definitely detrimental to the morale of our teaching staff and the effectiveness of the local educational system.

1. Illegal non-retention of three teachers, reflecting on the professional reputations of those involved, in violation of Section 138 of the State School Laws, which was later corrected only after the insistence of the Seward Local of the American Federation of Teachers in a public hearing with legal counsel.
2. It is a legitimate duty of administration to maintain or create harmony in the school, and the tension noted in the pupils, and the 'friction', which some of them were aware of, does not fit this requirement.
3. Non-compliance with the fire drill regulation requir-

ing ten fire drills per year (Sec. III, b, 4, Page 9, Rules and Regulations for the school staff/local/). This applies to both school buildings, one of which is a dangerous building.

4. Ordering the custodian, Jesse Moore, to do technical electrical work beyond his skill in a dangerous building.

5. On different occasions threatening to 'get one third of the faculty this year, and half of the remainder next year' in an apparent attempt to 'purge' the faculty. Why Mr. Fabricius should have had this preconceived and hostile attitude is unknown. Teachers have raised the question, 'How can one man, a stranger coming into a town, have the right to tamper with the livelihood of teachers, taxpayers, property owners, and upset a school system in a single year's time?' More than bringing teachers and others into public disgrace and disrespect, actions cited have jeopardized the property and investments of several people, without giving legitimate cause and without regard for their feelings and personal rights.

6. Provoking the resignation of an outstanding teacher by forbidding him to ride the school bus in what *seems* to be a violation of the intent of the Rules and Regulations Affecting School Transportation, Page 13, Item 31, Laws of the Territory, etc., the apparent authoritarian mishandling of this resignation impairing the teacher's chances for a teaching position elsewhere. This action has placed the School Board and the taxpayers in the possible position of a suit to secure payment of the contract.

7. Dictatorial treatment of teachers, forcing them into the choice of submitting and taking it at the loss of personal dignity, or fighting back in a public spectacle.

8. Speaking in a peremptory [sic] and threatening manner in the presence of a pupil, to Mr. Smith.

9. Two specific instances have occurred violating the requirement to provide Educational Leadership in the local Regulations.

   a. Neglect to permit the development of a proper music program.

   b. Information relative to the Drama Festival held at Palmer was not made known to the teachers or the student body, although the school had participated ardently and with distinction the previous year.

   c. This same requirement is violated in overtly or covertly driving out Mr. Conder, Mr. Swick, Mr. Smith, and possibly others who had a definite contribution to make to the functions of the school.

10. Firing of Mrs. Davis apparently on the basis of personal dislike rather than for dereliction of duty or inefficiency. This resulted in public discussion reflecting adversely on the school, and placed Mrs. Davis in the position of consulting an attorney relative to the collection of salary allegedly due her.

We have, or can secure, sworn statements on every item.

We, the Seward Local of the American Federation of Teachers, have made every effort to secure correction of illegal, unethical, and unfair acts on the assumption that when the School Board knew of them it would take corrective action.

On May 8, 1959, in a public meeting with the School Board, compliance with the law in the matter of non-retention was secured only after great opposition and protest that the 'law had not been tested, and some educators do not regard it as a good law.'

At this same time we withheld information contained in this letter in order to keep the school functioning through the end of the school year and commencement.

We then invited the School Board to meet with us privately

to clarify the items here presented, to give Mr. Fabricius and the School Board the opportunity to reply, and to determine the quality of the list of administrative statements and actions. This, in effect, was giving Mr. Fabricius and the Board the opportunity for self defense which was denied the teachers who were not given contracts in April. We arranged a meeting time to suit the convenience of the Board, and our invitation was accepted.

With the exception of Mr. Howell, President, the Seward School Board DID NOT APPEAR, nor was the administration represented.

Therefore we request an immediate special open School Board meeting Tuesday night, May 19, for the purpose of presenting to the Board and the public particulars of administration in the Seward Public Schools, with announcement of the meeting by the Board over Station KIBH. At this time the Local shall demand immediate, guaranteed, substantial improvement in administrative policies including:

1. Validation of contracts offered to formerly non-retained teachers and those affected by additional education requirements.
2. Correction of the situation regarding Mr. Smith and Mr. Swick.
3. Avoidance of unreasonable reassignment of teachers wherever possible.
4. Conformity with standard ethical and professional standard personnel policies, such as outlined by AFT and NEA, especially regarding:
   a. Notification of teachers before their written notice of non-retention.
   b. Attempting to give constructive criticism to teachers, in an effort to correct and help personnel.

It is our sincere hope that, at this meeting, we can reach mutually acceptable solutions to the many problems facing us at this time.

Very truly yours,

SEWARD LOCAL
AMERICAN FEDERATION
OF TEACHERS

Copies: To patrons of the
Seward School.

Appellants admitted that they had not presented the matters charged in the letter to the Superintendent as grievances. Upon completion of the hearing the Seward School Board affirmed its decision of nonretention and appellants appealed to the State Board of Education, Appeals Committee. After a hearing, the Appeals Committee remanded the case to the Seward School Board with directions to conduct a new hearing and to enter findings of fact and conclusions of law.

The Seward School Board then held a second hearing commencing on November 4, 1960. Both sides were represented by counsel and numerous witnesses were heard. The transcript of this hearing contains 421 pages.

Upon completion of its second hearing and pursuant to the directions of the Appeals Committee, the Seward School Board entered findings and conclusions.

In its amended decision and findings of fact the Seward School Board found as follows with respect to its charges of immorality:

> 11. The Board finds that Item 4 of Board Exhibit 7 referred to an altercation between Superintendent George Fabricius and the School Custodian, Jesse Moore, which was aired before the School Board. Mr. Moore was not required to do technical electrical work beyond Mr. Moore's ability.

12. Item 5 of Board Exhibit 7 is based on an allegation by James Watts that Superintendent George Fabricius told him that he would 'get one-third of the faculty this year and half of the remainder next year.' Superintendent George Fabricius did not make any such statements to Mr. Watts, nor to any other faculty member, and the charge to that effect is false. (The Board resolves the direct conflict in testimony between Mr. Fabricius and Mr. Watts on this point in favor of Mr. Fabricius, crediting the testimony of Mr. Fabricius and discrediting the testimony of Mr. Watts. This decision is based in part upon observation of the demeanor of the two witnesses.)

13. The reference in Item 5 of Board Exhibit 7 to the jeopardizing by Superintendent George Fabricius of the property investments of several people without legitimate cause referred to the nonretention of a Seward teacher named Charles Brown. Mr. Brown was not retained by the Seward School system for the school year 1959 through 1960 for cause, because of his inability to maintain discipline among his students. The statement in Item 5 of Board Exhibit 7 to the effect that Superintendent George Fabricius jeopardized the property investments of several people without legitimate cause is false.

14. Item 6 of Board Exhibit 7 is a reference to the resignation of former school teacher Jack Conder. Mr. Conder tendered his resignation after an argument with Superintendent George Fabricius, during the course of which he was told by Superintendent George Fabricius that he would have to remain at school until 4:20 P.M., as required of all teachers, and that he would not be permitted to leave at 4:00 P.M. to ride the school bus home. Superintendent George Fabricius did not forbid Mr. Conder to ride the school bus, in violation of rules and regulations effecting school transportation. The statement in Item 6 of Board Exhibit 7 that the above described incident seemingly constituted a violation of the intent of the rules and regulations affecting school transportation was false.

15. Item 8 in Board Exhibit 7 refers to an incident occurring during the Spring of 1959 in which a teacher named Smith argued with Superintendent George Fabricius about the conduct of a study hall. We find, on the uncontroverted evidence, that Mr. Smith lost his temper with Superintendent George Fabricius and resigned. We find on all of the evidence that Superintendent George Fabricius did not act in a preemptory [sic] or threatening manner. We find, accordingly, that the statement in Item 8 Board Exhibit 7 is false.

16. Item 9,c of Board Exhibit 7 charges that Mr. Conder, Mr. Swick and Mr. Smith were "driven out." We find on the record as a whole that, Mr. Smith and Mr. Conder tendered their resignations and Mr. Swick, by his own actions, failed to renew his contract and was, therefore, terminated. The charge that the above three teachers were driven out is not supported by the record and we find that the charge is false.

17. The distribution of Board Exhibit 7, containing the false charges described in Findings 11, 12, 13, 14, 15 and 16, to the general public of Seward had a tendency to bring the teaching profession into public disgrace and disrespect, and constituted an act of immorality, as defined in Section 37-5-12, ACLA, 1949, as amended.

18. The distribution of Board Exhibit 7, containing false charges described in Findings 11, 12, 13, 14, 15 and 16, to the general public of Seward by Mr. Watts and Mr. Blue tended to bring Mr. Watts and Mr. Blue into public disgrace of disrespect.

19. On or about April 28, 1959, James Watts asked Mr. and Mrs. Benjamin Frampton, who at that time were members of the faculty of Seward Public Schools, if they would go along with a group of which Watts was a representative and whose purpose was to oust Mr. Fabricius from his job as Superintendent of Schools. (The Board resolves the conflict in testimony between Mr. & Mrs. Frampton and Mr. Watts in favor of Mrs. [sic] & Mrs.

Frampton, crediting their testimony and discrediting that of Mr. Watts. This decision is based in part on the demeanor of the individuals.)

20. In the Spring of 1959, James Watts solicited Monty H. Richardson, who at that time was a school teacher in the Seward Public Schools, to join a group the purpose of which was to get rid of Mr. Fabricius as Superintendent of Schools. (The School Board resolves the conflict in testimony between Mr. Richardson and Mr. Watts in favor of Mr. Richardson, by crediting Mr. Richardson's testimony and discrediting the testimony of Mr. Watts. This decision is based in part upon the demeanor of the two witnesses.)

23. During a period beginning on or about May 28, 1959, and continuing into the month of June, 1959, James Watts and Walter B. Blue aided in preparing, distributing and soliciting signatures for a petition for the recall of the Seward School Board members.

26. In an attempt to gain popular support for a recall vote involving the Seward Public School Board members, Walter B. Blue made a speech to the International Longshoremen & Warehousemen's Union in Seward, Alaska, in which he stated, "We have been unable to get rid of the Superintendent, so we are going to get rid of the Board," or words to that effect.

In conclusions based upon its findings the Seward School Board found that appellants' conduct tended to bring them and the teaching profession into public disgrace or disrespect and affirmed its decisions of nonretention.

Appellants appealed and after a hearing the State Board of Education, Appeals Committee, on May 26, 1961, found in effect that the order of nonretention of the Seward School Board was supported by its findings and that its findings were supported by the evidence. The Board's decision was affirmed. Appellants then prosecuted a writ of review to the superior court.

In a mandate dated December 28, 1961, the superior court vacated the decision of the Appeals Committee and remanded the matter to the Committee to make specific findings of fact and conclusions as to the charges of immoral conduct and as to whether Regulation E(7) of the Seward School Board was ever duly adopted and if so, the details of its violation by appellants. It had been urged by appellants that there was not substantial evidence before the Seward School Board to support its finding that many of the charges made in the Open Letter were false. Upon this basis appellants were asking that review be granted and the Board record be ordered up for review. The superior court granted review as requested but did not order any part of the Board record brought up for review to determine whether there was substantial evidence to support the Board's findings. Without reviewing the transcripts of proceedings the superior court concluded as a matter of law and stated in its mandate that circulation by appellants of the Open Letter and recall petition were not immoral conduct within the meaning of the statute.

The Appeals Committee reviewed the record and in its opinion of July 31, 1962 recognized and stated at the outset that the superior court's mandate, concluding as it did that as a matter of law circulation of the Open Letter was not immoral conduct within the meaning of the statute, foreclosed it from further considering that evidence as support for the Seward School Board's finding that the act amounted to immoral conduct. The Committee then reviewed the remainder of the evidence in support of the Board's findings Nos. 19-22 and 26-28. It found substantial evidence in support of the findings and affirmed the Board's conclusions that appellants' conduct in urging teachers Frampton and Richardson to join a group which had the purpose of attempting to oust the Superintendent and the making of an inflammatory speech to the members of the I.L.W.U. tended to bring appellants and the teaching profession into disgrace or disrespect and constituted "immorality" as defined by statute.

A second writ of review was filed in the superior court and denied without opinion or explanatory order.

We have reviewed the record and the testimony elicited at the various hearings.

The Open Letter was distributed to the general public. Simultaneously copies were delivered to the members of the Seward School Board and Superintendent Fabricius. The letter requested an immediate special open meeting with the school board on the night of May 19 for the purpose of presenting to the Board and the public "particulars of administration in the Seward Public Schools." The meeting was to be announced over radio station KIBH and it was stated that "at this time the Local shall demand immediate, guaranteed, substantial improvement in administrative policies."

Of the various charges made in the letter, the Seward School Board found six to be false.[20] Appellant Blue admitted that he had composed the original Open Letter, which was altered in some respects before being reproduced and distributed. Both appellants admitted taking an active part in the reproduction and distribution of the letter to the general public. There was some conflict in the testimony as to the truth of most of the charges, as is indicated in the Board's findings, which contain transcript citations.

The function of the Seward School Board was to conduct a fair hearing, judge the credibility of the witnesses, weigh and appraise the evidence, determine the issues of fact and announce its conclusions. In *Keiner v. City of Anchorage*[21] we held that a "board's findings should not be reversed if in the light of the whole record they are supported by substantial evidence, i.e., such relevant evidence as a reasonable mind might accept as adequate to support a conclusion".[22]

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[20]See text *supra* at pages 17, 18 and 19 where these findings of the School Board are set out.

[21]378 P.2d 406 (Alaska 1963).

[22]*Id.* at 411.

Even though there was some conflict in the evidence in the present case as to whether the appellants' conduct constituted "immorality" as defined by the statute, there is no question but that such evidence was relevant and adequate and substantial under the above stated rule.

Of the various charges compiled, reproduced and distributed to the public at large by appellants six were found to be false statements of fact. All of the false statements in the charges reflected on the professional ability of the Superintendent. Those concerning his overbearing and arbitrary treatment of the named teachers were profesionally degrading to him. All of the false statements were an indirect reflection on the administration of the Seward school system as a whole. Admittedly none of the matters covered by the false statements were submitted as grievances in accordance with Board regulations, a point which will be discussed later. Instead, a time and date were arbitrarily selected for an "Open School Board meeting" in order to present to the "Board and the public" named grievances. It was announced that at "this time the Local shall demand immediate, guaranteed, substantial improvement in administrative policies", etc. The over-all, abiding effect of the widespread circulation of the false statements and the high-handed method employed to seek redress in disregard of established procedures, could only result in a loss of respect by the public for appellants and the teaching profession in general when all of the facts became known and was immoral conduct within the meaning of that term as it was then defined by statute.[23]

We are of the opinion that the superior court erred in concluding as a matter of law that circulation of the Open Letter was not immoral conduct within the meaning of the statute. The conclusions of the Seward School Board and the Board of Education, Appeals Committee on this point are therefore reinstated and affirmed.

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[23]See authorities cited notes 14-19 *supra* and accompanying text.

The Board's finding that appellant Watts had solicited teachers in the Seward schools to support a private move to oust the Superintendent was supported by the testimony of Benjamin Frampton, principal of the elementary school, that he was a member of the Seward District Teachers' Association with appellant Watts; that on the morning of April 25, 1959, between 8:30 and 9 o'clock in the morning, which was during school hours, Watts came to his room and asked to see him and his wife in his wife's first grade room; that after arriving there Watts stated that he had been sent as the representative of a group and wanted the Framptons to go along with a movement to oust the Superintendent and that Watts said that they were quite sure they could get the Superintendent. Frampton testified that he replied that he thought the Superintendent was doing all right and refused to acquiesce. Mrs. Margaret Frampton verified her husband's testimony and in addition testified that she was also a fellow member of the Seward District Teachers' Association (S.D.T.A.) with Watts; that Watts served on the Association's grievance committee to meet with the School Board; that in her opinion his attempt to oust the Superintendent was improper since there was a regulation which prescribed a method for doing this. Monty Richardson, a Seward teacher, testified that he was President of the S.D.T.A. and that he had appointed Watts to be a member of the public relations committee which was also known as the grievance committee; that he knew of no plan of the Association to oust the Superintendent; that in his capacity as a representative of the S.D.T.A. Watts did not represent it in advocating ouster. When asked if Watts in his individual capacity had solicited him to join in ousting the Superintendent, Richardson became a reluctant witness, but finally admitted that "there was certain overtones during the spring of 1959" by Mr. Watts. When asked if he would "consider those overtones to be within the scope of . . . Watts' responsibilities as a member of the grievance committee of the S.D.T.A.", Mr. Richardson replied, "No sir." Appellant Watts testified that the Framptons' testimony was false, but that he considered

them to be people of high character. E. G. Naegel, a Seward teacher, testified that appellant Watts stated to him in a classroom at the school that the Superintendent would probably not be in his job more than a month or so and "that if it was the last thing they would do, they would get . . . the Superintendent" and that Mr. Watts had stated to him during a recess period when they were supervising physical education classes that neither "Mr. Frampton nor Mr. Fabricius was either capable or competent of making a decision on the right to hire and fire the teachers and he felt that the community, that the public should make that decision."

With respect to Board finding 26, concerning appellant Blue's speech to the Longshoremen and Warehousemen's Union in Seward, Mr. John Sadusky, a member of I.L.W.U. Local 60, testified that Mr. Blue attended a meeting of his local in June or July of 1959 and addressed it concerning the Seward school system, the School Board and the Superintendent; that in his speech he stated in effect "that they couldn't get rid of the Superintendent so they had to go after the School Board" and that he believed that Mr. Blue left some petitions for recall of the School Board in the union hall. Appellant Blue denied recalling that he made such a statement.

We find that there was substantial evidence to support the findings with respect to the preceding charges and pass now to consider the question of whether the conclusions based upon the findings were legally justified.

We are of the opinion that appellant Watts' conduct in soliciting teachers Benjamin Frampton and Margaret Frampton, on school premises, during school hours, to join in a private movement to attempt to oust Superintendent Fabricius was immoral conduct within the statutory definition.[24]

[24]There was no direct testimony that Watts had solicited teacher Monty Richardson during school hours, or that he had actually solicited the cooperation of teacher E. G. Naegel, although his representations to Naegel were made during school hours and on school premises.

Such an objective was not recognized or sponsored by the S.D.T.A. according to the testimony of its president and Mrs. Frampton. The framework of the regulations provided an orderly, honorable, and democratic method of processing and proving the incompetency and unfitness of the Superintendent, which could have resulted in his removal from office if substantiated. Appellant Watts' efforts, made during school hours on school premises, were degrading, unprofessional and detrimental to morale and discipline and could only result in loss of respect by the public for him and his profession when all of the facts became known.

With respect to appellant Blue's speech before the I.L.W.U., the charge in the bill of particulars alleged that "false and misleading statements relating to the actions of the Seward School Board", were made in addition to the statement that, "we have been unable to get rid of the Superintendent, so we are going to get rid of the Board". While there is sufficient evidence in the record to support the finding that the latter statement was made, we find no evidence to support the charge that false and misleading statements were also made. The witness Sadusky did recall that a speech was made by Blue which "had to do with the School Superintendent and the School Board", but he could not recall any specific statements other than the one concerning removal of the Superintendent. The question which must be decided then, is whether the making of the statement, when considered in the light of the whole record,[25] that is, in relation to all of the recorded happenings in Seward during May and June of 1959 in which Blue participated, tended to bring him or his profession into public disgrace or disrespect.

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[25] AS 44.62.570, *Scope of Review,* states in part that:

(c) The court may exercise its independent judgment on the evidence. If it is claimed that the findings are not supported by the evidence, abuse of discretion is established if the court determines that the findings are not supported by (1) the weight of the evidence, or (2) substantial evidence in the light of the whole record.

Appellant Blue had edited the original version of the Open Letter which, even after being revised, contained numerous statements degrading to the Superintendent and indirectly to the school administration which were found to be false. Without having made any official charge against Superintendent Fabricius which could have been processed in an orderly democratic manner and according to regulations, Blue was publicly, by innuendo, disparaging the head administrative official of the Seward school system in order to enlist support for the School Board recall petition. Blue's statement to the union members that "we" have been unable to get rid of the Superintendent would seem to infer that a majority of the teachers and/or their unions were being referred to. Actually, the movement was a private one, not supported by a majority of the newly formed Alaska Federation of Teachers. The statement was found to have been made to gain support for the School Board recall petition being circulated by appellants.[26] It implies that at least one attempt had been made to get rid of the Superintendent, which was prevented by the School Board and that the Board should therefore be recalled. The record however, contains no evidence of any previous attempt to get rid of the Superintendent. Exhibits 8, 9 and 10 of the Seward School Board hearing are signed statements made by three residents of Kenai and Soldotna, Alaska, stating that during May or June of 1959 appellant Blue had contacted and questioned them concerning Superintendent Fabricius character, administrative policies, and personal habits while a Superintendent in Kenai. The statements agreed that Blue was seeking information of a derogatory nature. When considered in relation with his other attempts to professionally discredit the Superintendent and indirectly the school administration, we believe the finding and conclusion with respect to the effect of Blue's speech to the Longshoremen's

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[26]See Blue v. Stockton, 355 P.2d 395 (Alaska 1960) where appellant Blue's contention that the Seward School Board was subject to recall was upheld.

Union are supported by substantial evidence. The constitutional aspect of this question will be considered later in this opinion.

Next to be considered is the allegation by appellees that the Board finding that appellants had failed to comply with Regulation E(7) of the Seward School Board was a sufficient independent cause for their nonretention.

In the notices of nonretention and bills of particular delivered to appellants, they were advised that they had not complied with the policies, regulations and procedures of the Seward School Board relating to the filing of complaints against the administration and the School Board and that this failure to comply had resulted in bringing the teaching profession into public disgrace and disrespect and therefore constituted "immorality" under the state. Essentially the same wording, less the allegation of immorality, was alleged as a separate and independent ground for nonretention.

With respect to the charge that appellants had failed to render substantial compliance with Board regulations, the Board found and concluded as follows:

> 3. Board Exhibit 12 is a true and correct copy of all the School Board regulations of the Seward Public Schools which were in effect during the school years 1958 through 1959 and 1959 through 1960. Said regulations were adopted by the Seward School Board and put into force at least prior to January 1, 1959, although, through an oversight, this was not reflected in the School Board minutes prior to that date.
>
> 4. A copy of the regulations described in Finding 3 was furnished to each teacher in the Seward Public Schools, including teachers Watts and Blue, at some time prior to January 1, 1959. Teachers Watts and Blue were familiar with these regulations, including Regulation E(7), which provides as follows:
>
> > 'Grievances, complaints and communications from employees shall be submitted to the Board through

the Superintendent. Any employee, or group of employees, may at any time appeal to the Board.'

5. On or about May 18, 1959, teachers Watts and Blue actively participated in the preparation of an 'Open Letter to the Seward School Board' and, further, actively participated in distributing copies of said letter to the members of the Seward School Board, to Superintendent George Fabricius, and to the public of Seward generally. Board Exhibit 7 is a copy of the 'Open Letter to the Seward School Board' so prepared and so distributed.

6. The Open Letter to the Seward School Board, described in the preceding finding, contained various charges by certain Seward School teachers, including teachers Watts and Blue, against Superintendent George Fabricius, which constituted grievances or complaints within the meaning of E(7) of the School Board Regulations.

7. None of the grievances or complaints enumerated in Board Exhibit 7 was presented to Superintendent George Fabricius prior to the distribution of the Open Letter to the Seward School Board on May 18, 1959.

8. Teachers Watts and Blue were bound to substantially comply with the School Board Regulations on and after May 18, 1959, the date of the distribution of the Board Exhibit 7 which was after the close of the school year but during a period when Watts and Blue were under contract to teach for the next school year.

9. The distribution of the Open Letter to the Seward School Board by teachers Watts and Blue was a violation of Regulation E(7) of the School Board Regulations.

10. Although the Open Letter to the Seward School Board was delivered to Superintendent George Fabricius at substantially the same time that it was delivered to members of the School Board, this procedure did not comply with the requirements of Rule E(7) of the School Board Regulations that grievances and complaints be submitted to the School Board through the Superintendent.

In its mandate remanding this matter to the Appeals Committee, the superior court requested specific findings and conclusions as to whether Regulations E(7) had ever been duly adopted by the Seward School Board and if so, the details of its violation by appellants.

With respect to the validity of Regulation E(7) the Appeals Committee, upon rehearing, accepted as an exhibit the affidavit of four members of the Seward School Board that ". . . the attached regulations of the Seward School Board were adopted and put into force prior to January 1, 1959. Through oversight this was not reflected in the School Board minutes prior to that date.". The attached regulations consisted of twelve pages of detailed rules and regulations, including Regulation E(7).

The Appeals Committee held that the affidavit was adequate proof that Regulation E(7) was adopted by the Board and put into effect prior to January 1, 1959. The Committee found that there was substantial evidence to support the Board's findings that appellants did distribute the Open Letter before submitting it to the Superintendent and affirmed the Board's conclusion that this constituted substantial noncompliance with Regulation E(7).

We have reviewed the testimony concerning the charge of violation of Regulation E(7). Superintendent Fabricius testified that Exhibit 12, which comprised the rules and regulations of the Seward School Board was drafted by him from various manuals of the public schools of Alaska and that the regulations thus compiled were individually considered by all members of the Board and approved paragraph by paragraph; that they were approved at different times and that he was present when approval was given to all of the regulations, including those relating to the filing of grievances. Mr. Benjamin Frampton, principal of the elementary school, identified Exhibit 12 as being a copy of the Board regulations; stated that he had a copy in his school in the Spring of 1959; that each teacher was supplied with a copy and was required to be familiar with it. Mrs. Mar-

garet Frampton, first grade teacher, corroborated her husband's testimony. Appellant Blue testified that he knew of the regulations in the Spring of 1959 and was familiar with Regulation E(7). Appellant Watts stipulated that he was familiar with Exhibit 12 and Regulation E(7) in particular and that as a member of the AFT he assisted in the distribution of the Open Letter along with appellant Blue. Watts tesfied that with the exception of item 3 in the Open Letter, he thought none of the matters mentioned in the letter had been processed as grievances through the Superintendent; that the Open Letter was the first effort of his group to reduce to writing the grievances which it had and that appellant Watts had delivered copies of the Open Letter to the members of the Seward School Board on the same day copies were mailed to the general public. The Open Letter itself stated that the matters contained in it had been withheld from the School Board at a meeting had with the Board ten days previously, in order to await the end of the school year. The teaching contracts of appellants which were in force during the times discussed herein, were introduced into evidence as proof of their agreement to abide by the regulations of the Seward School Board.

Both appellants admitted that they were familiar with Seward School Board Regulation E(7) during the times mentioned herein. The Board finding that it had been validly adopted prior to January 1, 1959 is supported by substantial evidence and is affirmed.

By its wording this regulation required that grievances, complaints and communications from employees should be submitted to the Board through the Superintendent. It provided a right of appeal from the Superintendent to the Board.

The evidence was substantial that, with the possible exception of item 3 of the Open Letter, none of the complaints or grievances contained therein had ever been communicated to the Superintendent. A statement on page 2 of the Open Letter is to the same general effect.

The conclusion that appellants had violated their teaching contract and Regulation E(7) in a substantial manner as an independent ground for their nonretention is affirmed.[27]

Next to be considered is legislation enacted by the Alaska Legislature subsequent to publication of our Opinion No. 251 on September 21, 1964.

First to be considered is the amendment to AS 14.20.090[28] enacted during the 1965 session mentioned earlier in this opinion. This amendment reduced the number of causes for which a teacher's certificate could be revoked from five to three. Immorality was retained as a cause with a definition of the term added, defining it as "the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude". This is the amendment referred to by the United States Supreme Court in Watts v. Seward School Board[29] when this case was remanded to us for reconsideration.

Appellant argues that this amendment is an indication of the intent of the legislature as to the meaning to be given to immorality as a cause for nonretention.

The weakness in this argument is that the statute stating the causes for revocation of a teacher's certificate has never been involved in this case. Appellants were nonretained under SLA 1957, chapter 71, section 2[30] for immorality and substantial noncompliance with school regulations. Under this statute immorality was defined as "conduct of the person tending to bring the individual concerned or the teach-

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[27]See Jepsen v. Board of Education of Community High School, 19 Ill. App. 2d 204, 153 N.E.2d 417 (1958).

[28]Quoted note 5 *supra*.

[29]381 U.S. 126, 14 L.Ed.2d 261, 262 (1965).

[30]Now AS 14.20.170(a)(2) and (3).

ing profession into public disgrace or disrespect". This is the statute and the definition of immorality which the Seward School Board and the Board of Education, Appeals Committee, were applying to the facts of appellants' case in 1960. No other definition of immorality was contained in the education laws. The fact that the legislature in 1965 amended the statute concerning revocation of teaching certificates by adding a new and different definition of immorality, while leaving in force the nonretention statute with its long standing definition of immorality, if anything, creates confusion rather than the enlightenment that appellant urges.

Additionally, House Bill 25 and Senate Bill 6 were introduced at the beginning of the 1965 session and passed by majorities in their respective houses of origin, but neither bill was enacted by the opposite body during that session. These bills proposed to amend the statute on nonretention by substituting for its definition of immorality, a definition defining it as the commission of an act involving moral turpitude. Since the filing of briefs and argument herein the Alaska Legislature enacted chapter 104 during its 1966 session. Chapter 104 was a committee substitute for Senate Bill 6, just mentioned. This amendment became effective on July 14, 1966. It repeals the original definition of immorality upon which this case was decided and defines immorality as the commission of a crime involving moral turpitude.[31]

The question now is whether this latter amendment can be given a controlling application to the facts of this case on reconsideration and if not, whether it is, nevertheless, useful in determining the original legislative intent as to the interpretation to be given to the term "immorality".

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[31] It should be noted that as a result of this amendment there is no longer a statutory clause for nonretention of a teacher for general misconduct not amounting to a crime involving moral turpitude.

The general rule on retrospective operation of statutes is embodied in AS 01.10.090 which states: "No statute is retrospective unless expressly declared therein." We have had occasion to apply this statute in *Stephens v. Rogers Constr. Co.*[32] Even before its enactment, the rule contained in the statute was established by case law, as noted in our opinion in *Hill v. Moe.*[33] The reason for the rule is perhaps best stated in *Shwab v. Doyle*[34] where the United States Supreme Court approved the following language from *Story*:[35]

> 'Retrospective laws are, indeed, generally unjust; and, as has been forcibly said, neither accord with sound legislation nor with the fundamental principles of the social compact.'

The Court then stated as follows:

> There is absolute prohibition against them when their purpose is punitive; they then being denominated ex post facto laws. It is the sense of the situation that that which impels prohibition in such case exacts clearness of declaration when burdens are imposed upon completed and remote transactions, or consequences given to them of which there could have been no foresight or contemplation when they were designed and consumated.[36]

Since SLA 1966, chapter 104, amending AS 14.20.170(2), contains no declaration that it is to be given retrospective effect, we are foreclosed from giving it a direct controlling effect on the facts.

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[32] 411 P.2d 205, 208 (Alaska 1966).

[33] 367 P.2d 739, 742 (Alaska 1961), *cert. denied* 370 U.S. 916, 8 L.Ed.2d 498 (1962).

[34] 258 U.S. 529, 66 L.Ed. 747 (1922).

[35] Story, Const. Sec. 1398.

[36] Shwab v. Doyle, 258 U.S. 529, 534, 66 L.Ed. 747, 752 (1922).

We have considered, but have been unable to adopt the view that the amendment under consideration is useful in determining the meaning which the legislature intended should be given to immorality when it first adopted this term as a designation of a cause for nonretention in 1957.

The term "immorality" first appeared in our education laws in 1929 when it was made a ground for revocation of a teacher's certificate.[37] It was not defined, but was included in the same statute with such grounds for revocation as: "violation of written contract", "intemperance", "crime against the laws of the Territory", and "unprofessional conduct". No statute stating the causes that might be invoked in support of the nonretention of a teacher was included in the original education laws and none was enacted until 1957 when SLA 1957, chapter 71, section 2 (now AS 14.20.170) first stated and defined the causes for nonretention.

The term "immorality" already had a history of use in the education laws of other states and had been construed

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[37]Section 70 of chapter 97, SLA 1929, which established the Territorial school system, stated:

> Certificates may be Revoked. The Commissioner of Education shall have the power to revoke for immorality, violation of written contract, intemperance, crime against the laws of the Territory, or unprofessional conduct, any certificate which may have been granted; Provided, that no certificate shall be revoked until the accused has been given an opportunity to be heard.

This statute became AS 14.20.090 when Alaska laws were recodified and remained unamended until 1965 when SLA 1965, chapter 41, was enacted. The amendment eliminates intemperance, crimes against the laws of the state not involving moral turpitude and unprofessional conduct as statutory causes for revocation of a teaching certificate. It should be noted that upon this redefinition of immorality there is no longer a "catch-all" statutory cause for revocation of a teaching certificate for misconduct which is not a violation of a law or a specific school regulation.

in the context of its usage to designate a cause for nonretention of a teacher by the highest courts of several states.[38] The broad definition first provided by our legislature, as conduct tending to bring the teacher or his profession into public disgrace or disrespect, is not inconsistent with the broad interpretation given to immorality by the courts of other states and is evidence that our legislature intended that it serve the purpose of a "catch-all" statute for all types of misconduct which would warrant refusing to renew a teacher's contract.[39] It seems likely that the coverage provided by the original definition was broad because it was intended to be broad, but it is not ambiguous.

On April 19, 1966, present counsel for appellants, who was a member of the Judiciary Committee of the Alaska House of Representatives during the 1965 and 1966 sessions and one of the sponsors of House Bill 25, forwarded to this court a copy of the House Journal for April 12, 1966, containing a House Judiciary Committee Report on Senate Bill 6, which was reported out of committee as House Committee Substitute for Senate Bill 6. The report refers to this court's first opinion in this case construing immorality and to the fact that it now has the case before it again, and states in part that, "this report will be helpful to . . . [the court] as an expression of legislative intent that the immorality necessary for nonretention of a teacher is his commission of an act which, under the laws of the state constitutes a crime involving moral turpitude."[40]

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[38]See authorites cited notes 14-19 *supra* and accompanying text.

[39]See notes 9-19 *supra* and accompanying text.

[40]The report in its entirety read:

REPORTS OF STANDING COMMITTEES

SB 6 The Judiciary Committee has had SENATE BILL NO. 6 (Teachers- conduct of) under consideration and the majority of the committees recommends that it be replaced with HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 6, entitled:

"An Act relating to the cause for dismissal or non reten-

The objection to accepting the House Judiciary Committee's effort at construction of the original legislative intent is that it is diametrically opposed to what appears to be the expressed intent of the 1957 legislature when it first defined immorality. The House Journal for that session shows that the House had before it a specific motion which would have adopted as a definition of immorality as a cause for non-retention the following:

> (b) 'Immorality' means the commission of any act which involves moral turpitude and which, if committed by any citizen generally, would be punishable at law.

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tion of a teacher; and defining the term 'immorality' when used as a cause."

and that HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 6 do pass.

The committee further requests that the following Judiciary Committee report accompanying SENATE BILL NO. 6 be spread in the journal:

"REPORT OF HOUSE JUDICIARY COMMITTEE
ON HOUSE COMMITTEE SUBSTITUTE
FOR SENATE BILL NO. 6

In *Watts and Blue v. Seward School Board*, Alaska Supreme Court No. 427, Sept. 1964, the court construed AS 14.20.170(2) which is amended by HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 6. In that case the court held that two teachers, Mr. Watts and Mr. Blue could be discharged because their action in soliciting labor union and fellow teachers for support in removing the school superintendent and members of the school board from office was an immoral act under Alaska Law. The case was taken to the United States Supreme Court (Watts v. Seward School Board Per Curiam No. 923) which said: 'We need not consider petitioners' contentions at this time, for since their petition for certiorari was filed, Alaska has amended its statutes governing the dismissal of teachers.' The amendments referred to were chapters 14 and 41, SLA 1965. The state supreme court now has the case before it and HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 6 and this report

Objection was voiced from the floor and the following amendment was offered and unanimously adopted:

> Strike sec. (b) and insert '(b) 'Immorality' means conduct tending to bring the individual concerned or the teaching profession into public disgrace.'[41]

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will be helpful to it as an expression of legislative intent that the immorality necessary for nonretention of a teacher is his commission of an act which, under the laws of the state constitutes a crime involving moral turpitude. While the substantive change of HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 6 is already embodied in the recently passed HOUSE BILL No. 12 (Education Code), it is felt that enactment of HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 6 will make manifest legislative intent as an aid to the court."

The report was signed by Mr. Guess, Chairman, and concurred in by Messrs. Taylor, Tillion, Stevens and Metcalf. Mr. Josephson abstained pursuant to the Uniform Rules of the Legislature.

SENATE BILL NO. 6 was referred to the Rules Committee for placement on the calendar.

[41] House Journal 1957, at 336 reads in pertinent part:

The House was called to order.

Mr. Metcalf offered the following amendment to C.S. HOUSE BILL NO. 33.

. . . .

Mr. Metcalf then offered the following amendment:

Page 2, Line 7: After the word 'be' delete everything down to and including semicolon on line 15 and substitute in lieu thereof the following:

'limited to and based on 'Incompetence' and 'Immorality', which are defined as follows:

(a) 'Incompetency' means the unintentional or intentional failure or omission to perform one's legitimate duties in a satisfactory manner with respect to one's present position.

(b) 'Immorality' means the commission of any act which involves moral turpitude and which, if committed by any citizen generally, would be punishable by law.

Subsequently the definition of immorality was again amended to add the words 'or disrespect'.[42]

Since the 1957 legislature was specifically moved to adopt the definition of immorality which would have restricted the term to crimes involving moral turpitude and rejected the motion and unanimously adopted the definition which has heretofore been applied in this case by the administrative bodies and the courts, we find no merit in appellants' argument on this point.[43]

Last to be considered under this subject is appellants' argument that enact of AS 14.20.095[44] by the 1965 legislature is a fact which should influence our reconsideration of this case.

Mr. Metcalf moved and asked unanimous consent that the amendment be adopted. Seconded by Mrs. Fischer. Mr. Coghill objected.

Mr. Buckalew then offered the following amendment to the amendment:

> Strike sec. (b) and insert '(b) 'Immorality' means conduct tending to bring the individual concerned or the teaching profession into public disgrace.'

Mr. Buckalew moved and asked unanimous consent that the amendment to the amendment be adopted. There being no objection the amendment to the amendment was ordered adopted.

[42]House Journal 1957, at 404.

[43]On the subject of construing legislative intent under these and similar circumstances see: Nichols v. School Dist. No. 3, 87 Mont. 181, 287 Pac. 624, 626 (1930); Rural Independent School Dist. v. New Independent School Dist., 120 Iowa 119, 94 N.W. 284, 286-87 (1903); 1 Sutherland, Statutory Construction § 1931 (3 ed. 1943). We have also considered Watts, Watts & Co. v. Unione Austriaca Di Navigazione, 248 U.S. 9, 21, 63 L.Ed. 100, 101 (1918) and Vandenbark v. Owens-Illinois Glass Co., 311 U.S. 538, 541-42, 85 L.Ed. 327, 329 (1941) and find the doctrine of those cases with respect to applying supervening changes in law to be inapplicable to this case.

[44]Quoted note 4 *supra*.

We have concluded that this statute can have no controlling effect on the facts of this case.

It cannot be given retrospective effect because there is no express declaration in the statute that it should have this effect.[45] In any event, it is directed at the rules or regulations that the commissioner of education, a local school board or local administrator might promulgate which would restrict or modify the right of a teacher to criticize public education officials outside school hours. In the case before us it is an act of the legislature itself that is being construed with relation to appellants' conduct. The new statute applies to activities conducted outside school hours, whereas much of the conduct condemned in this case occurred during school hours. The statute in no way condones the circulation to the public of false criticism of public education officials. In signing AS 14.20.095 into law the Governor commented:

> In brief, this bill does protect teachers who criticize others from being dismissed on the ground that they have violated a school regulation. But it does not protect a teacher from dismissal on the ground of 'immorality', as occurred in the Watts case. The bill might well mislead some into believing that no adverse results would follow from defamation of school or public officials. This would be a false and dangerous assumption.[46]

Last to be considered is the question of whether any of the Board's conclusions, affirmed herein, infringe on appellants' rights to freedom of speech under the First Amendment to the United States Constitution.

There is no constitutional question associated with the Board's conclusion that publication and circulation of the Open Letter to the general public was substantial noncom-

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[45] AS 01.10.090.

[46] Legislative Reporting Service, Report Number 12, p. 141 (1965).

pliance with Board Regulation E(7), which required that "grievances, complaints and communications" be submitted to the Board through the Superintendent.[47]

With respect to the other questions presented, appellants urge that we consider the applicability of *New York Times Co. v. Sullivan*,[48] *Garrison v. Louisiana*,[49] and *Dombrowski v. Pfister*,[50] since these decisions had not been published in time to have been briefed and considered prior to the issuance of our Opinion No. 251.

In *New York Times*, a public official was prosecuting a suit for libel for money damages against the newspaper because of criticism of his official conduct published in a paid advertisement containing false statements. In *Garrison* a district attorney was appealing a conviction of criminal defamation for criticism directed at state judges. The facts and purposes involved in the above cases are considerably different from those now before us. Here the appellants were not being prosecuted, civilly or criminally, by the public official against whom the false statements were directed. The Seward School Board was simply exercising its right under state law to refuse to renew appellants' teaching contracts for an additional year for conduct which it found brought public disgrace and disrespect upon appellants and the teaching profession generally. In placing *New York Times Co.* and *Garrison* in perspective, the Court said at 379 U.S. at 75, 13 L.Ed.2d at 133:

> Hence the knowingly false statement and the false statement made with reckless disregard of the truth, do not enjoy constitutional protection.

There is no question but that appellants had a constitutional right to compile, reproduce and distribute the Open

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[47] See text p.p. 28-34 *supra*.

[48] 376 U.S. 254, 11 L.ed.2d 686 (1964).

[49] 379 U.S. 64, 13 L.Ed.2d 125 (1964).

[50] 380 U.S. 479, 14 L.Ed.2d 22 (1965).

Letter, even though it did contain false statements concerning the Superintendent.[51] But this does not mean that they cannot be held appropriately accountable where their acts wrongfully damage their own and another's professional prestige, reflect detrimentally on the teaching profession as a whole and result in a loss of respect by the public for appellants and the local school system. The production and distribution of the Open Letter was a time consuming and

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[51] This concept of the constitutional right was judicially expressed in 1788 in Respublica v. Oswald, 1 Dall. 319, 1 L.Ed. 155, 159, 1 Am. Dec. 246, which was decided at the time the states were in the process of ratifying the constitution. The court said:

> The true liberty of the press is amply secured by permitting every man to publish his opinion; but it is due to the peace and dignity of society to inquire into the motives of such publications, and to distinguish between those which are meant for use and reformation . . . and those which are intended merely to delude and defame. To the latter description, it is impossible that any good government should afford protection and impunity.

In Commonwealth v. Blanding, 3 Pick. 304, 15 Am. Dec. 214, 218 (Mass. 1825) the court said, in interpreting this constitutional right:

> The liberty of the press was to be unrestrained, but he who used it was to be responsible in case of its abuse; like the right to keep firearms, which does not protect him who uses them for annoyance or destruction.

In Patterson v. Colorado, 205 U.S. 454, 462, 51 L.Ed. 879, 881 (1907), Justice Holmes cited the above cases as authority for stating:

> In the first place, the main purpose of such constitutional provisions is 'to prevent all such *previous restraints* upon publications as had been practised by other governments,' and they do not prevent the subsequent punishment of such as may be deemed contrary to the public welfare. (Citing cases.) The preliminary freedom extends as well to the false as to the true; the subsequent punishment may extend as well to the true as to the false.

See Near v. Minnesota, 263 U.S. 696, 75 L.Ed. 1357 (1930) where the Court cited with approval the above quoted portion of Patterson v. Colorado in holding that prior restraint against the press could not

deliberate act. The false statements contained in it were not made in heated debate. The factual basis for the charges could have been verified by appellants if they had taken the time to do so. Appellants admittedly ignore established democratic procedure for obtaining redress. Instead, they attempted to arouse and inflame the public against the Superintendent and the School Board on charges which were largely untrue. They chose to attempt to substitute the mass meeting for the orderly process of hearing and appeal. Under these facts we must hold that, considering the nature of their employment, appellants exceeded the limits of the exercise of their right of freedom of speech to the extent that they were not entitled to require the Seward School Board to renew their teaching contracts under the tenure law.

Appellant Watts had a constitutional right to freedom of discussion with other teachers, but he did not have a constitutional right to have his teaching contract renewed after soliciting teachers on school premises, during school hours, to support a private move to oust the Superintendent, where the effect of these acts was to bring down public disgrace and disrespect on him and his profession and to undermine the morale and discipline of the local school system.

Again, there is no doubt but that appellant Blue had the right to address the meeting of longshoremen and state that "we have been unable to get rid of the Superintendent, so we are going to get rid of the Board". And, when consi-

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be exercised, but that the publisher would be held liable for publications which abused the privilege. The Court in Near also noted the exception to the general rule which has been held to apply in times of war citing Schenck v. United States, 249 U.S. 47, 63 L.Ed. 470 (1919). (Actually, the constitutional right of freedom of speech seems to consist basically of the right to utter and print words. The ideas or thoughts expressed by those words are only considered in hindsight to determine whether or not the utterer abused his constitutional privilege.)

dered as an isolated act, separate and apart from the other events in which he took part in Seward during May and June of 1959, it would no doubt be said that no disgrace or disrespect could have resulted. However, when considered in the light of the entire record—that is, in relation to all of Blue's activities and all of the happenings during the times involved, the Board's conclusion can be sustained.[52] On the other hand, the constitutional question becomes a close one which should be resolved in appellants' favor in view of the fact that the record contains no evidence that false or misleading statements were made, in fact, contains no evidence of anything that was said at the meeting except the statement under consideration and that the speech was not made on school premises during school hours.

We have been unable to find any application of the rule of *Dombrowski v. Pfister*[53] to the facts of this case.

More in point is *Adler v. Board of Education*[54] where the Supreme Court of the United States held that a New York statute permitting the Board of Regents, after hearing, to announce the organizations which it found advocated overthrow of the government by force or violence, and to provide by regulation that membership of a teacher in such an organization was prima facie evidence of disqualification, did not violate the constitutional rights of freedom of speech. In discussing *Garner v. Los Angeles Bd. of Pub. Works*[55] where the Court held that a municipal employer was not prevented, because of being an agency of the state, from inquiring of its employees as to matters that may prove relevent to their fitness and suitability for public service, the Court in *Adler* said:

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[52] See discussion in text p.p. 18-19 *supra*.

[53] 380 U.S. 479, 14 L.Ed.2d 22 (1965).

[54] 342 U.S. 485, 96 L.Ed. 517 (1952).

[55] 341 U.S. 716, 95 L.Ed. 1317 (1951).

> A teacher works in a sensitive area in a school room. There he shapes the attitude of young minds towards the society in which they live. In this, the state has a vital concern. It must preserve the integrity of the schools. That the school authorities have the right and the duty to screen the officials, teachers, and employees as to their fitness to maintain the integrity of the schools as a part of ordered society, cannot be doubted.[56]

The Court went on to state at 342 U.S. at 493, 96 L.Ed. at 525 that a teacher who was disqualified from employment under the statute was not thereby denied the right of free speech and assembly—that his freedom of choice between membership in the organization and employment in the school system might be limited, but not his freedom of speech or assembly, except in the remote sense that limitation is inherent in every choice.

We find no merit in appellants' contention that AS 14.20.170(a)(2), defining immorality as conduct tending to bring disgrace or disrespect upon the teacher or his profession, was unconstitutional for vagueness.

Controlling on this point is *Beilan v. Board of Education*[57] where the Court stated:

> We find no requirement in the Federal Constitution that a teacher's classroom conduct be the sole basis for determining his fitness. Fitness for teaching depends on a broad range of factors. The Pennsylvania tenure provision specifies several disqualifying grounds, including immorality, intemperance, cruelty, mental derangement and persistent and willful violation of the school laws as well as 'incompetency.'

The Court's comments on and approval of the use in statutes of broad "catch-all" phrases to describe a teacher's conduct are quoted *supra* at page 8.

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[56] 342 U.S. at 493, 96 L.Ed. at 524.

[57] 357 U.S. 399, 406, 2 L.Ed.2d 1414, 1420 (1958).

In *Swan v. Board of Education*[58] the court held that the phrase "unprofessional conduct" was not void for vagueness. At 261 P.2d at 266 the court said:

> As was said in the Goldsmith case, 66 Cal. App. at page 168, 225 P. at page 787: '. . . the calling [of a teacher] is so intimate, its duties so delicate, the things in which a teacher might prove unworthy or would fail are so numerous, that they are incapable of enumeration in any legislative enactment. . . . [the] teacher is instrusted with the custody of children and their high preparation for useful life. His habits, his speech, his good name, his cleanliness, the wisdom and propriety of his unofficial utterances, his associations, all are involved. His ability to inspire children and to govern them, his power as a teacher, and the character for which he stands are matters of major concern in a teacher's selection and retention. How can all of these things be provided for and *offenses against them be particularly specified in a single statute?* It was further said, 66 Cal. App. at page 172, 225 P. at page 789: 'No one has a natural or inherent right to teach a public school' and the Legislature 'for reasons of public policy' may 'make the right to teach in any particular school subject to a broad discretion in the school authorities to dismiss for causes which come within very general designations.' (Emphasis added.)

We have considered the views of our dissenting colleague.[59] It is our view that our colleague could only arrive at the conclusions recommended with respect to the conduct of appel-

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[58]41 Cal.2d 546, 261 P.2d 261 (1953), *cert. denied,* 347 U.S. 937, 98 L.Ed. 1087 (1954).

[59]It is established procedure in this court, where the interests of clarification and finality may be served, for the majority opinion to comment briefly on the views advanced by a dissenting opinion, which has already had the opportunity of commenting on the views of the majority.

lant Watts and the violation of Regulation E(7) by emphasizing portions of the testimony of individual witnesses, given on cross-examination, to the exclusion of the over-all testimony of numerous witnesses and reversing the findings and conclusions of the Seward School Board which had observed each witness individually and had made its findings on substantial evidence.

It is argued that the majority should not have reconsidered the trial court's order with respect to the circulation of the Open Letter. This view must be considered in the light of the fact that appellants specifically requested that the case be considered de novo and that appellee requested that the validity of Regulation E(7) and its violation be passed upon. In order to reconsider the case in its entirety the record was ordered supplemented by the transcript of all board proceedings. As our colleague points out in his opinion, (footnote 25) under the circumstances this court is free to consider any undetermined issues as well as to alter a previous determination of law "in regard to the proper construction and permissible reach of AS 14.20.170(a)(2)'s 'immorality' as a grounds for nonretention." We do not consider that the authorities cited by our colleague have been superceded.

Our colleague seems to be of the view that this court's original interpretation of "immorality" was incorrect because of the United States Supreme Court's mandate and the authorities cited.

The authorities cited in footnote 25 of the dissent represent instances where the United States Supreme Court disagreed with the construction of the state court and *reversed* and remanded the case for "'further proceedings not inconsistent" with that Court's views. Here, our interpretation of the meaning of immorality, pursuant to AS 14.20.170-(a)(2), was not reversed. The United States Supreme Court did not express any view of its own with respect to the meaning of that term. It vacated the judgment and remanded the case to this court for further consideration in view

of the fact that there had been changes in certain Alaska statutes since publication of our decision.

In this connection it should be mentioned that the Supreme Court's original per curiam opinion of May 3, 1965, stated that subsequently enacted legislation in Alaska had changed the definition of immorality *as grounds for dismissal* to "the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude". This, of course, was not the case. The legislation which was enacted was the provision defining "immorality" as a ground for *revocation of a teaching certificate* in AS 14.20.090, where no definition of "immorality" had previously been provided.[60]

When this discrepancy was drawn to its attention the United States Supreme Court issued its corrected per curiam opinion which accurately reflected the above fact. The point is that at the time the case was remanded the United States Supreme Court was obviously not aware of the fact that the statute which had been amended was one that was not directly involved in this case.

This court, therefore, is not under a mandate from the United States Supreme Court to revise its interpretation of "immorality" to conform to some view expressed by that Court because no view has been expressed. This court is only under a mandate to reconsider its interpretation in the light of subsequently enacted legislation in Alaska, which has been done.

We agree with all of the law and philosophy contained in the various quotes on freedom of speech cited in our colleague's opinion, but do not believe they are applicable to the facts before us.

It is therefore ordered:

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[60]This aspect of the case is discussed on p.p. 35-36 of this opinion.

(1) That the Seward School Board's conclusion that appellants were guilty of substantial noncompliance with Board Regulation E(7) is affirmed as a separate and independent cause for their nonretention.

(2) That the Seward School Board's original conclusion that appellants were guilty of immorality within the meaning of the statute as it then defined that term, for their part in compiling, reproducing and distributing the Open Letter containing false statements disparaging of the Superintendent is affirmed as a cause for their nonretention.

(3) That the Seward School Board's conclusion that appellant Watts was guilty of immorality, as it was then defined by statute, for his activities in soliciting teachers to join in a private move to oust the Superintendent is affirmed as a cause for his nonretention.

(4) That the Seward School Board's conclusion that appellant Blue's speech to the longshoremen's union constituted immorality, as it was then defined by statute, is set aside for not being supported by substantial evidence.

RABINOWITZ, Justice, dissenting in part, concurring in part.

I concur in the majority's conclusion that appellant Blue's talk to the Seward longshoremen was not immoral conduct. I dissent from the majority's determination that appellant Watts' solication of his fellow teachers, the Framptons, constituted immorality; from the decision that both appellants "were guilty of immorality . . . for their part in compiling, reproducing and distributing the Open Letter"; and I also dissent from the majority's holding that appellants "were guilty of substantial noncompliance with Board Regulation E(7)."

AS TO APPELLANTS' IMMORALITY IN THE COMPILATION, REPRODUCTION AND DISTRIBUTION OF THE MAY 18, 1959, OPEN LETTER

In the March 1960 bills of particulars accompanying the notices of nonretention which were sent by the Seward

School Board, appellants were in part charged with having engaged in "acts of immorality which have tended to bring . . . [appellants] and the teaching profession into public disgrace and disrespect." As to the May 18, 1959, Open Letter, it was particularized that appellants had

> assisted in the printing and distribution of false, distorted and misleading statements in a 'Bill of Particulars' against the Superintendent of the Seward Public Schools, with the intent of injurying the professional standing of the Superintendent and destroying community and pupil confidence in the administration of the schools. Such statements contained in this Bill of Particulars tended to destroy community confidence in the management of school affairs by the School Board. This 'Bill of Particulars' was circulated during 1959 in the community of Seward.[1]

When the matter was before the superior court in December 1961 on appellants' initial petition for review, Judge James M. Fitzgerald held in part that:

> [A]s a matter of law, the circulation by the petitioners of the Open Letter to the Seward School Board under date of May 18, 1959, is not immoral conduct within the meaning of the statute. I also conclude that, as a matter of law, the circulation of a petition seeking the recall of members of the Seward School Board is not immoral conduct within the meaning of the statute.[2]

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[1] The quote is from the bill of particulars which was sent to appellant Blue. The substance of the pertinent part of the bill of particulars which appellant Watts received is the same.

[2] In his oral opinion pertaining to this issue, Judge Fitzgerald said:

> This definition agrees generally with that adopted by the . . . [Supreme Court of Oklahoma] in Warkentin vs. Kleinwachter, 27 P 2d 160. That court found immoral conduct to be that conduct which is willful, flagrant, or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community. Judged in the light

The case was then remanded to the Appeals Committee of the State Board of Education for additional findings of fact and conclusions of law. After this was accomplished, appellants again sought review in the superior court and in September 1963, Judge Hubert A. Gilbert denied appellants' second petition for review. Appellants then appealed to this court from the denial of their second petition for review.

It is of particular significance that appellees failed to cross-appeal from Judge Fitzgerald's holding that as a matter of law appellants' actions in regard to the Open Letter and recall petition did not constitute immoral conduct. None of the briefs which were initially presented to this court made any reference to these rulings in regard to the Open Letter and recall petition.[3]

After the United States Supreme Court vacated the Judgment which had been entered in *Watts v. Seward School Bd.*[4] and had remanded the case,[5] this court requested further briefs. In none of the additional briefs, which were thereafter filed, was issue made of Judge Fitzgerald's 1961

> of these standards, the circulation of the open letter to the Seward School Board, under date of May 18, 1959, is not immoral conduct; nor is circulating a petition seeking the recall of members of a school board immoral conduct within the meaning of the statute. This is not to say that the conduct of the petitioners may not be cause for non-retention under other provisions of the statute.

Note that the bills of particulars which accompanied the notices of nonretention also specified that appellants were guilty of immoral acts because while teachers

> in the Seward Public Schools, [they] carried to the people of the community and personally signed a petition seeking a recall of the Seward School Board on charges that could not be substantiated and which were false.

[3]See the brief filed with this court prior to our initial decision in Watts v. Seward School Bd., 395 P.2d 372 (Alaska 1964).

[4]*Ibid.*

[5]Watts v. Seward School Bd., 381 U.S. 126, 14 L.Ed.2d 261 (1965).

ruling that appellants were not guilty of immoral conduct resulting from any part they played in authoring, reproducing, and circulating the Open Letter of May 28, 1959.[6]

Thus, without any attempt to distinguish this court's prior precedents, and without the benefit of an adversary presentation (i.e., statement of points, specification of errors, and arguments in appellate briefs), the majority has unilaterally decided to reverse Judge Fitzgerald's holding as to the Open Letter. It is interesting that the majority isolates the Open Letter for this singular appellate treatment without attempting any reference to the superior court's decision in regard to the petition for recall.

In *Theodore v. Zurich Gen. Acc. & Liab. Ins. Co.*,[7] this court said:

> If Zurich had felt that that decision was erroneous, it might have taken a cross-appeal to this court. But it failed to do so, and it thus waived its objection that service of process was improper or insufficient.[8]

Four years later in *Alaska Brick Co. v. McCoy*,[9] the *Zurich* rule was again adhered to. At page 457, this court stated:

> Appellee did not take a cross appeal. Nor did he even file a cross statement of points in appellant's appeal, which at least would have alerted appellant to the existence of the issue as to attorney's fees so

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[6]Similarly no issue is made of Judge Fitzgerald's holding that appellants' circularization and adherence to the petition for recall of the Seward School Board was not immoral conduct as a matter of law.

[7]364 P.2d 51, 57 (Alaska 1961).

[8]In support of this holding this court cited Western Life Indem. Co. v. Rupp, 235 U.S. 261, 271, 59 L. Ed. 220, 224 (1914); Alaska Industrial Bd. v. Chugach Elec. Ass'n, 356 U.S. 320, 324-25, 2 L.Ed.2d 785, 798 (1950).

[9]400 P.2d 454, 457 (Alaska 1965).

> that additional portions of the record might have been designated if appropriate. Orderly procedure will not permit an appellee to attack a judgment for the first time in his brief in the appellant's appeal. We shall not pass upon the matter as to the attorney's fees allowed by the trial court.

See also the following authorities which have reached similar conclusions as to the necessity of perfecting cross-appeals. *Arkansas Fuel Oil Co. v. Leisk*, 133 F.2d 79 (5th Cir. 1943); *Cochran v. M & M Transp. Co.*, 110 F.2d 519 (1st Cir. 1940); *United States v. Bentley*, 107 F.2d 382 (2d Cir. 1939); *Smith v. Boise City*, 104 F.2d 933 (9th Cir. 1939).

In determing to reverse the superior court on this point, the majority not only has disregarded the holdings of *Zurich* and *Alaska Brick* but by virtue of its reversal has assigned to limbo a vast body of this court's prior literature, including that portion of this court's original opinion in *Watts v. Seward School Bd.*[10] where it was said:

> The appellants voiced a broad and general claim in their brief on appeal that their constitutional rights to assemble and speak freely have been abridged in this case and that they have been deprived of their personal liberties and property rights without due process of law. They treat the subject in a very cursory fashion and cite us to no case law in support of their claim. Under these circumstances we need not consider the point.[11]

In addition to *Watts*, the decisions of this court are relatively legion in which issues were not resolved because of the parties' failure to raise proper objections in the trial court, or because of improper statements of points on appeal, or because of improper specifications of error, or due

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[10] 395 P.2d 372, 376 (Alaska 1964).

[11] *Accord*, Sanuita v. Common Laborer's & Hod Carriers Union, 402 P.2d 199, 203 (Alaska 1965).

to the lack of adequate treatment of specific issues in their appellate briefs. See: *Sanuita v. Common Laborer's & Hod Carriers Union*, 402 P.2d 199 (Alaska 1965); *Meyst v. East Fifth Ave. Serv.*, 401 P.2d 430 (Alaska 1965); *Alaska Brick Co. v. McCoy*, 400 P.2d 454 (Alaska 1965); *Alaska State Housing Authority v. Vincent*, 396 P.2d 531 (Alaska 1964); *Merl F. Thomas Sons, Inc. v. State*, 396 P.2d 76 (Alaska 1964); *Williams v. DeLay*, 395 P.2d 839 (Alaska 1964); *Apex Concrete Co. v. Bray*, 395 P.2d 514 (Alaska 1964). *Buza v. Columbia Lumber Co.*, 395 P.2d 511 (Alaska 1964); *Saxton v. Harris*, 395 P.2d 71 (Alaska 1964); *Orbeck v. Wheeler Constr. Co.*, 394 P.2d 781 (Alaska 1964); *Higgins v. Lantz*, 394 P.2d 776 (Alaska 1964); *Preferred Gen. Agency, Inc. v. Raffetto*, 391 P.2d 951 (Alaska 1964); *Thompson v. Wheeler Constr. Co.*, 385 P.2d 111 (Alaska 1963); *Freightways Terminal Co. v. Industrial & Commercial Constr., Inc.*, 381 P.2d 977 (Alaska 1963); *Gregory v. Padilla*, 379 P.2d 951 (Alaska 1963); *Pollastrine v. Severance*, 375 P.2d 528 (Alaska 1962); *Parks v. Brown*, 368 P.2d 220 (Alaska 1962); *Veal v. Newlin*, 367 P.2d 155 (Alaska 1961); *Bidwell v. Scheele*, 355 P.2d 584 (Alaska 1960).

On the basis of the holdings in *Theodore v. Zurich Gen. Acc. & Liab. Ins. Co.*[12] and *Alaska Brick Co. v. McCoy*[13] and the above sampling of authorities, and in light of the fact that appellees never cross-appealed from the superior court's holding that appellants' part in writing, reproducing and distributing the Open Letter was not immoral conduct, I am of the opinion that this issue is not properly before us and that Judge Fitzgerald's decision on this point should therefore remain undisturbed. In my view it was inappropriate for the majority to have decided an issue of such importance without the benefit of an adversary presentation.

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[12] 364 P.2d 51 (Alaska 1961).

[13] 400 P.2d 454 (Alaska 1965).

and in circumstances which have denied appellants any opportunity to argue this question.[14]

AS TO APPELLANT WATTS' IMMORALITY ARISING FROM "HIS ACTIVITIES IN SOLICITING TEACHERS TO JOIN IN A PRIVATE MOVE TO OUST THE SUPERINTENDENT"

The majority has concluded that appellant Watts' conduct in soliciting the Framptons is within AS 14.20.170(a)(2)'s definition of immorality as a cause for nonretention. I think it appropriate to again point out that this statute, before amendment, had defined immorality as

> conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect . . . .

At the second hearing before the Seward School Board, Benjamin Frampton testified that on April 28, 1959, he

> went with Mr. Watts down to Mrs. Frampton's room and there he stated that he had been sent as a representative of the group . . . he had been a friend of ours for a long time. He wanted to know if we would go along with the movement to oust Mr. Fabricius. He stated that he knew the certification of teachers is not the real issue. He said he knew I was in the middle and didn't want me to get hurt. He said that they were quite sure they could get Mr. Fabricius and wanted to know if we would go along with them. We told him at that time that we could see no reason why anyone should try to get Mr. Fabricius and we considered he was doing all right and would have take [sic] the stand of Mr. Fabricius and the school board. Then we asked Mr. Watts what group was going along with him. Then he said under

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[14] Further reference will be made to the May 18, 1959, Open Letter in conjunction with discussion of other issues.

> the circumstances he would rather not say. I believe that was the conversation.[15]

The foregoing is the sum total of Watts' immoral conduct in regard to the Frampton solicitation. The record further establishes that the only persons present during this entire conversation were Mr. and Mrs. Frampton and appellant Watts. It is undisputed that this conversation took place in Mrs. Frampton's classroom. As to the time of the conversation Mr. Frampton testified that:

> It was April 28, 1959 before school, that morning.
>
> . . . .
>
> I can't say definitely, I imagine it was somewhere between 8:30 and 9:00 however.

Mr. Frampton was then asked whether in his "experience as a teacher and a principal in the Seward public school system," the period between 8:30 and 9:00 was "during school hours for a teacher." The witness then testified "According to our regulations it would have been," Subsequently, on cross-examination, Mr. Frampton testified that the conversation with appellant Watts took place before school that morning, and also testified "It's possible I couldn't say" that the conversation with Watts took place prior to 8:30 a.m.[16] In any event, the Seward School Board made no finding as to the time this conversation took place. Yet on the state of this, at best, equivocal record the majority apparently lays great stress on the fact that this conversation took place "during school hours." More particularly, the majority concluded that Watts' conduct in soliciting the Framptons

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[15]Mrs. Frampton's version of this conversation was the same with the exception that she testified that she said she would not join and "I asked, what has Mr. Fabricius done to deserve such a thing as this? He didn't come up with an answer."

[16]Watts flatly denied Framptons' version of the April 28, 1959, conversation. He also testified that the talking question took place before school had started.

on school premises, during school hours, to join in a private movement to attempt to oust Superintendent Fabricius was immoral conduct within the statutory definition.

Assuming the Framptons' version of the April 28, 1959, conversation is accurate, I fail to ascertain how this conversation among three teachers (before any school children were present) can be characterized as conduct which tended to bring the individual concerned or the teaching profession into *public* disgrace or disrespect. Taking the majority's definition of immorality as the applicable standard, I am of the opinion that Watts' contribution to the questioned conversation was not immoral conduct as a matter of law.

Precisely what concrete meaning is to be given to the statutory definition of immorality set forth in AS 14.20.170(a)(2) is never made clear by the majority. The authorities relied upon by the majority all define immorality in terms of conduct which is offensive to the community's morals or inconsistent with moral rectitude.[17] *Appeal of Schneider*,[18] also relied upon by the majority, stated that the synonyms of "immorality" are "corrupt", "indecent", "depraved", and "dissolute." Yet, after discussing these authorities, the majority concludes that "For the purposes of this case we must accept . . . the legislative definition provided." The opinion does indicate that the standard for determining immorality is "one of degree depending upon the rules of society and to some extent upon the mores of the particular community."

The majority's conclusion that Watts' conversation with the Framptons was tantamount to immoral conduct is apparently based on three gounds. First, it was reasoned that

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[17] Appeal of Batrus, 148 Pa. Super. 587, 26 A.2d 121 (1942); Negrich v. Dade County Bd. of Pub. Instruction, 143 So.2d 498 (Fla. App. 1962).

[18] 12 N.J. Super. 449, 79 A.2d 865 (App. Div. 1951).

the objective (ouster of the superintendent) was not recognized by the Seward District Teachers Association. As to this ground, we are not informed if this same conversation would be held moral if the Teachers' Association had as one of its objectives the removal of the superintendent. Secondly, the majority reasons that since "orderly", "honorable", and "democratic" regulations were available for removal of the superintendent, Watts' conversation with the Framptons was therefore immoral. I take this statement to mean that any violation of a school board regulation is equatable to immoral conduct. Thirdly, "when all of the facts became known" (note it is not stated what method of revelation is relevant or the pertinent scope of such revelation) Watts' conversation "during school hours on school premises, were degrading, unprofessional, and detrimental to morale and discipline and could only result in loss of respect by the public for him and his profession." As to this conclusion, the majority does not disclose which rules of society, or mores of a given community, compelled such characterizations. Similarly the reader is not informed if any one of these three categories in and of itself is sufficient to metamorphize Watts' conversation into immoral speech.

As pointed out earlier, what occured was a conversation among three adults, in the absence of any school children. After Watts made known his purpose, the Framptons unequivocally rejected Watts' request to join the movement and then and there articulated their support of the superintendent. To characterize Watts' conduct "corrupt", "indecent", "depraved", or "dissolute" is simply not borne out by the record. For the majority to conclude that Watts' conversation was "degrading", "unprofessional", "detrimental to morale and discipline" and resulted in loss of respect by the public is equally devoid of any substantiation in the record and appears to be the product of considerable speculation.

In short, assuming the truth of all the facts relied upon by the majority, and taking as the applicable standard their

adoption of the literal statutory definition of immorality, I am of the opinion that appellant's conversation with the Framptons did not tend to bring him or his profession into public disgrace or disrespect. Here all that was involved was speech directed toward requesting help in bringing about a change in school administration.

AS TO THE HOLDING THAT APPELLANTS' FAILURE TO COMPLY WITH REGULATION E-7 OF THE SEWARD SCHOOL BOARD "WAS A SUFFICIENT INDEPENDENT CAUSE FOR THEIR NONRETENTION"

I cannot agree with the conclusion that appellants' circulation of the Open Letter amounted to "substantial noncompliance" with the Board's regulations.[19]

Regulation E-7 of section I of the Seward School Board provides:

> Grievances, complaints and communications from employees shall be submitted to the Board through the Superintendent. Any employee or group of employees may at any time appeal to the Board.

Regulation E-9 of the Board's regulations reads:

> Employees or groups of employees desiring to address the Board shall address their communication to the Superintendent and not to individual members of the Board, except that copies of any communication may be sent to all Board members.

Also pertinent is the finding of the Seward School Board that "the Open Letter to the Seward School Board was delivered to Superintendent George Fabricius at substantially the same time it was delivered to members of the School Board."

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[19] AS 14.20.170(a)(3) provides that a cause for nonretention of a teacher is

> substantial noncompliance with the school laws of the state, the regulations or bylaws of the department, the bylaws of the district, or the written rules of the superintendent.

The record demonstrates that Superintendent Fabricius (the author of the regulations in question) had considerable difficulty explaining the instances where either regulation E-7 or regulation E-9 was applicable. He encountered similar problems in defining the relationship between these two regulations. At one point in his testimony, Superintendent Fabricius was asked:

> Mr. Walton: Let's take the other regulations - assuming this is a regulation of the Board. Subparagraph 7 - that states that grievances, complaints, and communications shall be submitted to the Board through the Superintendent. Do I understand you to state that in your opinion, as the one who drafted this regulation, that paragraph is qualified by Paragraph 9, which says it's OK to do it to the Board simultaneously.
>
> Mr. Fabricius: Well, if you back to the other paragraph, it states there, it's stated in there - my interpretation of it would be that it should be to the Superintendent, but it doesn't prevent you from at the same time sending it to the Board.[20]

A comparison of the text of Regulation E-7 with Regulation E-9 illuminates the uncertainties and ambiguities inherent in the Board's regulations regarding the proper procedure to be followed by its employees in addressing grievances, complaints, and communications to the Board. On this basis alone I would reverse the Board's finding that appellants were guilty of substantial noncompliance with Regulation E-7. The applicability of, and relationship between, the two regulations is at best uncertain. I find it unreasonable to conclude that appellants had failed to substantially comply with Regulation E-7 when the evidence shows that they had complied with the provisions of Regulation E-9;

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[20]Later Mr. Fabricius also testified "The Board might interpret that different than I do. They are the ones to decide."

that the regulations themselves were ambiguous, and that contemporaneous interpretation of these two regulations by the Superintendent and the Seward School Board was to the effect that substantially simultaneous notification to the Board and the superintendent was sufficient compliance with with Regulation E-7.[21]

Two other factors also lead me to differ with the majority's holding in regard to Regulation E-7. First, there is nothing in the text of Regulation E-7 which prohibits an employee from making a public disclosure of any grievance, complaint, or communication which he has submitted to the Board, and as is pointed out subsequently, education, and in particular administration of our schools, is a public issue as to which freedom of discussion is essential to the formation of public opinion. Secondly, in the crucial period during the weeks prior to the circulation of the Open Letter, the Seward School Board and the Superintendent had met with committees of the Seward District Teachers' Association in regard to grievances pertaining to the non-retention of certain teachers. At no time during this period did either the Seward School Board or the Superinten-

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[21] At one point when questioned about a meeting which took place a few weeks prior to the sending of the Open Letter, the following transpired:

Mr. Walton: Sir, do you believe that the Executive committee, of the SDTA, or the members representing it, violated the same regulations when it first approached the Board with respect to non-retention of these four teachers?

Mr. Fabricius: Well I believe they - I recall testimony which shows that they sent me a letter at the same time.

Mr. Walton: Is that what E7 provides for?

Mr. Fabricius: Well, That would be one way of providing for it.

Mr. Walton: Doesn't it say that all grievances shall be submitted to the Board through the Superintendent?

Mr. Fabricius: I believe if you go further along you will see that they may at the same time be sent to members of the Board.

dent require compliance with Regulation E-7 as a procedural prerequisite to the Board's receiving and hearing grievances, complaints, or communications from individuals.

In such circumstances I believe it to be basically unjust to hold appellants to the letter of Regulation E-7 which is ambiguous when read in conjunction with Regulation E-9 and one that had been, in practice, consistently disregarded by the Board during the period of time immediately preceding appellants' circulation of the Open Letter.

AS TO LEGISLATION ENACTED BY THE ALASKA LEGISLATURE SUBSEQUENT TO THE PUBLICATION OF THIS COURT'S OPINION IN WATTS v. SEWARD SCHOOL BOARD

In petitioning the United States Supreme Court for certiorari, appellants asserted that their dismissals for allegedly immoral conduct unconstitutionally infringed upon "their rights to political expression guaranteed by the First and Fourteenth Amendments of the United States Constitution." After observing that subsequent to the time appellants had filed their petition for certiorari, the Alaska legislature had passed SLA 1965, chapters 14 and 41, which acts redefined "immorality" as a ground for the revocation of a teacher's certificate and added a new section pertaining to the right of teachers to engage in comment and criticism as to school matters outside of school hours, the Supreme Court of the United States stated:[22]

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[22] AS 14.20.090(a) (SLA 1965, ch. 41, § 2) defined immorality for purposes of revocation

> as the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude.

AS 14.70.095 (SLA 1965, ch. 14) added a new section to our education laws. This act provides:

> *Right to Comment and Criticize Not to be Restricted.* No rule or regulation of the commissioner of education, a local school board, or local school administrator may restrict or modify the right of a teacher to engage in comment and cri-

> We need not consider petitioners' contentions at this time . . . .
>
> . . . .
>
> This Court has held that supervening changes in state law that may be relevant to the disposition of a case may require that the cause be remanded for appropriate action by the state court. See, e.g., Missouri ex rel. Wabash R.Co. v. Public Service Comm'n, 273 US 126, 131, 71 L ed 575, 577, 47 S Ct 311. Cf. Trunkline Gas Co. v. Hardin County, 374 US 8, 11 L ed 2d 38, 84 S Ct 49. Accordingly, it is appropriate to allow the Alaska Court to consider the effect of the new Alaska statutes upon this case.[23]

The Supreme Court of the United States' mandate remanded the case to this court

> in order that such proceedings may be had in the said cause, in conformity with the judgment of this Court above stated, as accord with right and justice, and the Constitution and laws of the United States.

Under this mandate this court was required to "consider the effect of the new Alaska statutes upon this case."[24] But this is not the full limit of our authority under this remand.[25] This court is free to consider, if necessary, any

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> ticism outside school hours, relative to school administrators, members of the governing body of any school or school district, any other public official, or any school employee, to the same extent that any private individual may exercise the right.

[23] Watts v. Seward School Bd., 381 U.S. 126, 127, 14 L.Ed.2d 261, 262 (1965).

[24] As has been pointed out, while the case was pending before this court on remand, the Alaska legislature amended AS 14.20.170(a)'s definition of immorality (SLA 1966, ch. 104). Immorality for purposes of nonretention is now defined as

> the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude.

[25] *Re* Sanford Fork & Tool Co., 160 U.S. 247, 255, 40 L. Ed. 414, 416 (1895). Writing for the Supreme Court, Mr. Justice Gray stated:

undetermined issues (such as the regulations issue) as well as to alter its previous determination of law in regard to the proper construction and permissible reach of AS 14.20.170(a)(2)'s "immorality" as a grounds for nonretention.[26]

It is well established that appellate courts, in the exercise of their jurisdiction, are empowered

> not only to correct error in the judgment entered below, but to make such disposition of the case as justice may at this time require . . . . And in determining what justice now requires, the court must consider the changes in fact and in law which have supervened since the decree was entered below.[27]

> When a case has been once decided by this court on appeal and remanded to the circuit court, whatever was before this court, and disposed of by its decree, is considered as finally settled. The circuit court is bound by the decree as the law of the case; and must carry it into execution, according to the mandate.

[26]See Hart & Wechsler, The Federal Courts and The Federal System, 420 (1953); Schuylkill Trust Co. v. Pennsylvania, 302 U.S. 506, 512, 82 L. Ed. 392, 396 (1938); Georgia Ry. & Elec. Co. v. City of Decatur, 297 U.S. 620, 623, 80 L. Ed. 925, 927 (1936); Western States Mach. Co. v. S.S. Hepworth Co., 152 F.2d 79, 81 (2d Cir.), *cert. denied*, 325 U.S. 873, 89 L. Ed. 1991 (1945).

In Hart & Wechsler, *ibid.*, the authors state:

> When the Supreme Court reverses the judgment of a state court, it normally remands the cause for proceedings 'not inconsistent' with the Court's opinion. This mandate leaves the state court free to pass on any other undetermined questions, or even to alter its determination of underlying state law.

[27]Watts, Watts & Co. v. Unione Austriaca, 248 U.S. 9, 21 63 L. Ed. 100, 101 (1918). See also Vandenbark v. Owens-Illinois Glass Co., 311 U.S. 538, 541-42, 85 L. Ed. 327, 329 (1941); Carpenter v. Wabash Ry., 309 U.S. 23, 27, 84 L. Ed. 558, 561 (1940); Patterson v. Alabama, 294 U.S. 600, 607, 79 L. Ed. 1082, 1086 (1935); Gulf, C & S. F. Ry. v. Dennis, 224 U.S. 503, 507, 56 L. Ed. 860, 862 (1912); Dinsmore v. Southern Express Co., 183 U.S. 115, 46 L. Ed. 111, 113 (1901); Brownell v. Kaufman, 251 F.2d 374, 375 (D.C. Cir. 1957);

Also pertinent to resolution of the issues before us is the related doctrine of law of the case. In regard to this doctrine, the court in *White v. Higgins*[28] stated:

> The doctrine of 'law of the case' is not an inexorable command. It 'merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their powers.' Messenger v. Anderson, 225 U.S. 436, 444, 32 S.Ct. 739, 740, 56 L.Ed. 1152 . . . . Though the power exists to reopen the points of law already decided, it is a power which will necessarily be exercised sparingly, and only in a clear instance of previous error, to prevent a manifest injustice. The doctrine of law of the case is normally a salutary one in the interest of economy of efforts and of narrowing down the issues in successive stages of litigation. In the absence of exceptional circumstances, it would be unfortunate if on second appeal counsel felt free to argue de novo as a matter of course the points decided on previous appeal. See Great Western Telegraph Co. v. Burnham, 162 U.S. 339, 343, 344, 16 S.Ct. 850, 40 L. Ed. 991.[29]

NLRB v. Continental Baking Co., 221 F.2d 427, 432 (8th Cir. 1955); NLRB v. National Gas Co., 215 F.2d 160, 162-63 (8th Cir. 1954); Washington v. United States, 214 F.2d 33, 46-47 (9th Cir.), *cert. denied*, 348 U.S. 862, 99 L. Ed. 679-80 (1954); Zank v. Landon, 205 F.2d 615, 616 (9th Cir. 1953); McMahan v. Hunter, 179 F.2d 661, 663 (10th Cir.), *cert. denied*, 339 U.S. 968, 94 L. Ed. 1376 (1950); Schaff v. R. W. Claxton, Inc., 144 F.2d 532, 533 (D.C. Cir. 1944).

In Patterson v. Alabama, *ibid.*, Mr. Chief Justice Hughes said:

> [W]e have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered.

This statement was adopted in its entirety in the Schaff case by Associate Justice Edgerton.

[28] 116 F.2d 312, 317 (1st Cir. 1940).

[29] See Kaku, Nagano v. Brownell, 212 F.2d 262, 263 (7th Cir. 1954);

In light of these principles and the supervening changes which have occurred in our education laws as a result of the enactment of SLA 1965, chapters 14 and 41 and SLA 1966, chapter 104, I am convinced that this court's initial construction of "immorality" was not in accord with the legislature's intent nor with the public policy of this state. To permit AS 14.20.170(a)(2)'s definition of immorality to reach these acts of appellants which the majority by their affirmance have labeled immoral, in my view raises issues as to the constitutionality of such a sweeping application of the statute. We previously held that it is our duty to reasonably construe statutes to avoid a danger of unconstitutionality.[30] I think this precept particulary appropriate here.

AS 14.20.170(a)(2)'s definition of "immorality" as conduct "tending to bring the individual concerned or the teaching profession into public disgrace or disrespect" is at best of doubtful significance and, potentially, of unlimited applicability. The Alaska legislature's subsequent enactment of SLA 1965, chapter 41, and SLA 1966, chapter 104, has limited, in regard to the causes for revocation and nonretention, "immorality" to the commission of crimes involving moral turpitude. Our legislature, by virtue of its passage

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where the court, in reference to the law of the case rule, stated:

> In other words, though the rule that what is said on appeal becomes the law of the case is not an iron-clad rule which denies power in the court to correct its manifest error, it is one of sound policy.

To the same effect, see General Am. Life Ins. Co. v. Anderson, 156 F.2d 615, 619 (6th Cir. 1946); Commissioner v. Nechter, 143 F.2d 486 (7th Cir.), *cert. denied*, 323 U.S. 759, 89 L. Ed. 607 (1944); Brown v. Gesellschaft Fur Drahtlose Tel., 104 F.2d 227, 228 (D.C. Cir. 1939); *In re* Hallbom's Estate, 189 Minn. 383, 249 N.W. 417, 418 (1933), *aff'd sub nom.* Pagel v. Pagel, 291 U.S. 473, 78 L. Ed. 921 (1934).

[30] Hoffman v. State, 404 P.2d 644, 646 (Alaska 1965); Territory of Alaska v. Craig Enterprises, Inc., 355 P.2d 397, 403 (Alaska 1960).

of SLA 1965, chapter 14, has also given statutory recognition to the policy of permitting teachers (outside of school hours) to comment on, and to criticize, school administrators, school boards, and any other public officer.

For the very first time in this case we now have the benefit of an unambiguous manifestation from the legislature concerning its intended delimitation of "immorality." Also by virtue of the legislature's enactment of SLA 1965, chapter 14, we have a clear statutory expression of public policy prohibiting restrictions upon the right of teachers to comment and criticize school administrators, school boards, or any other public official.

Under the Supreme Court of the United States' mandate, and the authorities heretofore cited, I would hold that this court's original construction of immorality in AS 14.20.170(a)(2) was incorrect in light of the relevant legislation which has been enacted since this court's original decision in the case at bar was rendered.

Such an analysis and conclusion is not, in my opinion, violative of AS 01.10.090's mandate that "No statute is retrospective unless expressly declared therein." It is not unreasonable to assume that the Supreme Court of the United States was aware of the "general rule on retrospective operation of statutes embodied in AS 01.10.090" when it remanded the case. Here the three statutory changes were enacted subsequently to, and in relation to, a specific controversy concerning the construction of the term "immorality" as a cause for nonretention. In such circumstances I am of the view that the three statutes can properly be looked to as legislative interpretations of the original AS 14.20.170(a)(2).[31] I do not think that the fact the 1957

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[31] See 1 Sutherland, Statutory Construction § 1931 (3d ed. 1943); School Dist. No. 18 v. Pondera County, 89 Mont. 342, 297 Pac. 498 (1931); Hintz v. Zion Evangelical United Brethern Church, 13 Wis. 2d 439, 109 N.W.2d 61 (1961); Kennedy v. Truss, 13 A.2d 431, 40 Del. 424 (Super. Ct. 1940).

legislature rejected the "crime of moral turpitude" definition in favor of the "tending to bring into public disgrace or disrespect" definition precludes the result I reach. The fact of this rejection does not mean that the legislature envisioned that the "tending to bring" definition of immorality would be applied to speech as it was in the case at bar. This last comment leads to the final point I wish to discuss, namely, that of free speech.

AS TO FREEDOM OF SPEECH

In the Declaration of Rights article of the Alaska Constitution, freedom of speech is guaranteed to the people of Alaska by the following provision:

> Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.[32]

In my view, the majority's conclusion that Watts' conversation with the Framptons was immoral and therefore a cause for his nonretention had denied him his freedom of speech under both the Alaska Constitution and the 1st and 14th Amendments to the United States Constitution.[33]

The philosophical basis of the role that free speech plays in a democratic society has been magnificently stated by Justice Holmes in his dissenting opinion in *Abrams v. United States*, 250 U.S. 616, 630, 63 L. Ed. 1173, 1180 (1919), where he said:

> But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations

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[32] Alaska Const. art. I, § 5. See also the 1st and 14th Amendments to the United States Constitution.

[33] I have shown previously why I believe the issue of appellants' immorality in regard to the Open Letter is not properly before this court. Therefore, this discussion of free speech will be limited essentially to the majority's conclusion that Watts' constitutional rights were not infringed.

> of their own conduct that the ultimate good desired is better reached by free trade in ideas,—that the best test of truth is the power of the thought to get itself accepted in the competition of the market; and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check the expressions of opinions that we loathe . . . .[34]

An equally cogent statement of the principles underlying the concept of free speech in our society is that of Justice Brandeis in his concurring opinion in *Whitney v. California*, 274 U.S. 357, 375-76, 71 L. Ed. 1095, 1105-06 (1927):

> Those who won our independence . . . believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; *that the greatest menace to freedom is an inert people; that public discussion is a political duty; and*

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[34] In 1859, John Stuart Mill wrote:

> The opinion which it is attempted to suppress by authority may possibly be true. Those who desire to suppress it, of course deny its truth; but they are not infallible. They have no authority to decide the question for all mankind, and exclude every other person from the means of judging. To refuse a hearing to an opinion, because they are sure that it is false, is to assume that *their* certainty is the same thing as *absolute* certainty. All silencing of discussion is an assumption of infallibility. Its condemnation may be allowed to rest on this common argument, not the worse for being common . . . . John Stuart Mill, On Liberty 15 (McCallum ed. 1946).

> *that this should be a fundamental principle of the American government.* They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances, and proposed remedies; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law—the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.[35] (Emphasis added.)

These principles of freedom of speech articulated in the writing of Justice Holmes and Justice Brandeis are appropriately relevent to analysis of the theory of our own state government and the role which the principle of freedom of speech should have in the democratic society provided for in the Constitution of Alaska.

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[35]See also Justice Black's concurring opinion in Barenblatt v. United States, 360 U.S. 109, 145-46, 3 L.Ed.2d 1115, 1140 (1959), where he said:

> The First Amendment means to me, however, that the only constitutional way our Government can preserve itself is to leave its people the fullest possible freedom to praise, criticize or discuss, as they see fit, all governmental policies and to suggest, if they desire, that even its most fundamental postulates are bad and should be changed; 'Therein lies the security of the Republic, the very foundation of constitutional government.' On that premise it has grown to greatness. Our Constitution assumes that the common sense of the people and their attachment to our country will enable them, after free discussion, to withstand ideas that are wrong.

See also Justice Black's concurring opinion in Wieman v. Updegraff, 344 U.S. 183, 193, 97 L. Ed. 216, 223 (1952).

Freedom of speech is the basic tenent of a self-governing democratic society[36] and has been guaranteed to the people of the State of Alaska by the framers of our constitution. For a democratic society to function it is imperative that the public be informed, and have made available to it reasonable means of obtaining information, on all public issues. And it is here that the principle of freedom of expression plays its crucial part in enabling our citizens to participate in the decision making processes of our democratic society.[37]

In regard to the content of permissible public debate, I believe the statement of the Supreme Court in *New York Times Co. v. Sullivan*, 376 U.S. 254, 270, 11 L.Ed.2d 686, 701 (1964), is apposite:

> Thus, we consider this case against the background of a profound national commitment to the principle that debate on public issue should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.[38]

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[36]See Meiklejohn, Free Speech and Its Relation to Self-Government, (1948):

> The principle of the freedom of speech springs from the necessities of the program of self-government. It is not a Law of Nature of Reason in the abstract. It is a deduction from the basic American agreement that public issues shall be decided by universal suffrage.

[37]See Frantz, *The First Amendment in The Balance*, 71 Yale L.J. 1424 (1962); Emerson, *Toward A General Theory of The First Amendment*, 72 Yale L.J. 877 (1963).

[38]It is also of significance that Justice Brennan, in writing for the court, said:

> That erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the 'breathing space' that they 'need . . . to survive,' . . . . 376 U.S. at 271-72, 11 L.Ed.2d, at 701.

Note in Garrison v. Louisiana, 379 U.S. 64, 74, 13 L.Ed.2d 125, 133 (1964), Justice Brennan wrote:

With these principles in mind, it is appropriate to examine the role that education performs in our current society. Few would contest that the education of our people is one of the paramount functions of our state government; is essential in the attainment of a responsible citizenry and to the development of the individual.[39] The role of the teacher in this country's system of education, and in turn education's part in a democratic society, is articulated by Justice Frankfurter in his concurring opinion in *Wieman v. Updegraff*, 344 U.S. 183, 196-97, 97 L. Ed. 216, 224-25 (1952), in the following manner:

> To regard teachers—in our entire educational system, from the primary grades to the university—as the priests of our democracy is therefore not to indulge in hyperbole. It is the special task of teachers to foster those habits of open-mindedness and critical inquiry which alone make for responsible citizens, who, in turn, make possible an enlightened and effective public opinion. Teachers must fulfill their function by precept and practice, by the very atmosphere which they generate; they must be exemplars of open-mindedness and free inquiry. They cannot carry out their noble task if the conditions for the

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> [O]nly those false statements made with the high degree of awareness of their probable falsity demanded by New York Times may be the subject of either civil or criminal sanctions.

[39] See, Chief Justice Warren's opinion in the school segregation case, Brown v. Board of Education, 347 U.S. 483, 493, 98 L. Ed. 873, 880 (1954), where these views were voiced in the following manner:

> Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities . . . . It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment.

> practice of a responsible and critical mind are denied to them. . . . They must be free to sift evanescent doctrine, qualified by time and circumstances, from that restless, enduring process of extending the bounds of understanding and wisdom, to assure which the freedoms of thought, of speech, of inquiry, of worship are guaranteed by the Constitution of the United States against infraction by national or State government.[40]

It is on the basis of the foregoing that I dissent from the majority's treatment of the free speech issue as it relates to appellant Watts.[41] The majority holds that since the "constitutional question" is close it chooses to resolve doubts in appellant Blue's favor, particularly where the record contains "no evidence that false or misleading statements were made." Yet Watts' constitutional rights of freedom of speech remains unvindicated because he spoke "on school

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[40] Justice Frankfurter also wrote in Wieman v. Updegraff:

> That our democracy ultimately rests on public opinion in a platitude of speech but not a commonplace in action. Public opinion is the ultimate reliance of our society only if it be disciplined and responsible. It can be disciplined and responsible only if habits of open-mindedness and of critical inquiry are acquired in the formative years of our citizens. The process of education has naturally enough been the basis of hope for the perdurance of our democracy on the part of all our great leaders, from Thomas Jefferson onwards.

[41] Since I have concluded that appellants did not violate Regulation E-7 of the Seward School Board, I consider it unnecessary to deal with the majority's assertion that "There is no constitutional question associated with the Board's conclusion that publication and circulation of the Open Letter to the general public was substantial non-compliance with Board Regulation E(7)." On the contrary, I am of the opinion that there are constitutional questions of free speech inherent in this issue, particularly in light of the circumstances which I have previously outlined and also in view of the fact that the regulations in no way provided access to public opinion on public issues.

premises", "during school hours", (a highly doubtful conclusion of the majority's) "to support a private move to oust the Superintendent", and because this conduct was "immoral." It is undisputed that Watts made no false or misleading statement to the Framptons. I fail to discern the constitutional distinction upon which Watts' speech is denied the very protection the majority now accords to Blue's talk to the longshoremen.

The majority's holding goes a long way in stifling any movement for reform or change in our educational system which happens to originate in the mind of an individual teacher. Under their view, before a teacher could constitutionally attempt to gather support to bring about a change in school administrators, such a goal must have had already attained the status of a public goal. As to any given facet of our educational system, diverse opinions and philosophies are held by the people of this state. The effect of the majority's decision is to discourage the one group that is most intimately aware of the workings and problems of our educational system from making their views known on this most vital of public issues.[42] The majority's attitude is summed up by their reliance upon *Adler v. Board of Education*[43] and its rationale that even though one is removed from his em-

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[42] I agree that any school system must have the means of maintaining proper discipline, screening undesirable teachers, and removing incompetent teachers. If it is necessary to accomplish this by means of a "catch-all" language, then school boards have authority to enact such catch-all regulation, violations of which could be the basis of statutory nonretention or revocation of a teacher's certificate.

[43] 342 U.S. 485, 96 L. Ed. 517 (1952). See also Shelton v. Tucker, 364 U.S. 479, 5 L.Ed.2d 231 (1960); Barenblatt v. United States, 360 U.S. 109, 3 L.Ed.2d 1115 (1959); Sweezy v. New Hampshire, 354 U.S. 234, 1 L.Ed.2d 1311 (1957); Wieman v. Updegraff, 344 U.S. 183, 97 L.Ed. 216 (1952), for post Adler decisions of the Supreme Court in the area of academic freedom. In light of these subsequent decisions, I question whether Adler would receive the same treatment today.

ployment in government service, he is not thereby denied any constitutional rights (i.e., free speech in particular).[44]

I believe that the majority's decision has denied Watts his constitutional right to speak freely as guaranteed by both the Alaska Constitution and the 1st and 14th Amendments to the United States Constitution. Watts had the constitutional right, whether erroneous or not, to be critical of his superintendent; to discuss with his fellow teachers the possibility of effectuating the superintendent's removal and to solicit the support of his fellow teachers for his views.[45]

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[44]See Professor Chafee's answer to the Adler philosophy in *Thirty-Five Years With Freedom Of Speech*, 1 Kan. L.Rev.:

> I am disturbed by the common assumption that deprivation of a job connected with the government is not a substantial loss of freedom. The theory is that governmental activity is a special sort of thing and not a general privilege; hence the ousted individual is simply thrust out of a small corner of life, with plenty of other places left open to him. Thus, in sustaining the New York Feinberg Law, the Supreme Court reasoned that a school teacher is not deprived of freedom of speech and assembly when he is thrown out of the public schools. Adler v. Board of Education, supra note 67. In short, when a teacher can think and talk as much as he likes by merely giving up a government job, this is freedom.
>
> Such a theory seems to me to assume what is not so. The man was trained to be a public school teacher and to spend his life in that profession. Since thinking and talking are his business, restrictions on them as a condition of holding his job are peculiarly repugnant, while it is like cutting off his hand for him to go elsewhere. And where else? Private schools are fully staffed and unlikely to take a man who has quit in a controversy. A school teacher is not prepared for a trade and he is too old to make a fresh start. The Court's reasoning would logically make out that disbarment of a lawyer with heterodox opinions is no infringement of freedom of speech and thought.

[45]This is to say no more than our legislature has already recognized by statute.

One of the most important functions of this court is to assure that constitutional rights are vindicated. By today's decision the right of free speech in this state has sustained a serious encroachment. Apparently the principles that free speech encompasses "uninhibited", robust", and "wide-open" debate on public issues has been shunted aside. In its place has been substituted a holding that cannot fail to curtail discussion among those most intimately concerned with this state's educational system.[46]

[Filed December 27, 1966.]

PETITION FOR REHEARING

COME NOW appellants, by and through their attorney, JOE P. JOSEPHSON, and petition this honorable court, pursuant to Supreme Court Rule 35, for rehearing. This petition is based upon the following grounds:

A. ORDER (1):

1. The court has overlooked, or failed to consider, constitutional questions associated with Regulation E-7 of free speech, press and association under the First Amendment to the Constitution of the United States, as made applicable to the several states by the 14th Amendment.

2. The court has overlooked, or failed to consider, whether Regulation E-7 is applicable in the case of the non-retention of tenure teachers, being under the heading of "School Board - General Policies", and in view of the dis-

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[46]It is necessary for me to state that I do not subscribe to the procedure of this court which prohibits a dissenting justice from either commenting on any reference the majority makes to his dissent, or from revising his dissenting opinion in light of the majority's revision. This dissenting opinion has been published under the foregoing "established procedure" of this court.

tinction made in the "regulations" themselves between "regulations" and "policies", and since Regulation E-7 is procedural and not substantive. (See, "Regulations", C-6).

3. The court has overlooked, or failed to consider, questions of due process of law under the 14th Amendment in reaching the question of the alleged violation of Regulation E-7 without oral argument or supplemental briefs regarding that question after remand to this court from the Supreme Court of the United States and following this court's supplementation of the record subsequent to the filing of briefs by counsel. Counsel for appellants has been deprived of the opportunity to make argument, written or oral, upon the record as supplemented or even to know the state of the record.

4. The court has overlooked, or failed to consider, questions of equal protection of the laws under the 14th Amendment in reaching the question of the alleged violation of Regulation E-7, after remand, without oral argument or supplemental briefs regarding that question and in view of the extreme sanctions imposed against appellants for the alleged violation.

B. ORDER (2):

1. The court has overlooked, or failed to consider, the principle of *res judicata* in reversing the decision of the Superior Court, from which no appeal was taken by either party, that the circulation by appellants of the open letter was not "immorality" within the meaning of the statute.

2. The court has overlooked, or failed to consider, the principle of equal protection of the laws under the 14th Amendment in reversing the decision of the Superior Court regarding the open letter, in the light of the practice applied against these petitioners in this court's first opinion wherein these appellants were foreclosed from the treatment of issues not deemed to have been raised.

3. The court has overlooked, or failed to consider, the principle of due process of law under the 14th Amend-

ment in reversing the Superior Court's decision regarding the open letter under procedural conditions which denied counsel the opportunity to brief or argue the issue.

C. ORDERS (2) and (3):

1. In these orders, the court has overlooked or failed to consider adequately raised or constitutional issues regarding due process of law under the 14th Amendment to the Constitution of the United States, resulting from construction of the term "immorality" so as to render the word a "catch-all" covering "a broad range of conduct". As construed, the term is unconstitutionally vague, and the court overlooked or failed to consider the problem of vagueness as it relates to due process of law.

2. In these orders, the court has overlooked or failed to consider the recent decision of the Supreme Court of the United States in *Bond v. Floyd*, ____ U.S. ____, 35 L.W. 4038 (87 Oct. term, 1966), in which the United States Supreme Court held that the Georgia legislature's refusal to seat petitioner, because of certain anti-war statements he had uttered, contravened the petitioner's rights under the 1st Amendment. The court held that a state may not apply stricter standards of speech to a public official than to a "citizen-critic". Distinctions made by this court of the cases of *New York Times Co. v. Sullivan*, 376 U.S. 254, and *Garrison v. Louisiana*, 379 U.S. 64, are shown by the opinion of the court in the *Bond* case, *supra*, as unfounded and not merited, as the *Bond* opinion discussed earlier case law.

D. ORDERS (1), (2), and (3):

In refusing to allow the dissenting judge to comment upon the majority's references to his dissent or to revise his dissent in the light of the revision, the court has overlooked or failed to consider due process and equal protection questions under the 14th Amendment, inasmuch as such comments or revisions by the dissenting judge, if permitted, might have persuaded another justice of this honorable court to reach opposite conclusions.

DATED at Anchorage, Alaska, this 24th day of December, 1966.

Respectfully submitted,

/s/ Joe P. Josephson
JOE P. JOSEPHSON,
Attorney for Appellants

[Certificate of Service dated December 27th, 1966.]

[Filed February 2, 1967.]

File No. 427

OPINION

[No. 380 - December 7, 1966]

On petition for rehearing:

In their petition for rehearing under Supreme Court Rule 35 appellants allege that the court has "overlooked, or failed to consider" constitutional questions concerning free speech, due process of law and equal protection of the laws with respect to the violation by appellants of Seward School Board Regulation E-7.

This court has not overlooked or failed to consider any question presented to it. The fact is that at no time during the six years this case has been in existence has it ever been argued, either in the administrative tribunals or courts, that there were any constitutional questions related to the issue of the validity and application of Regulation E-7.

Supreme Court Rule 9(e) requires that an appellant shall file with his designation of record a concise statement of the points on which he intends to rely on the appeal. Supreme Court Rule 11(5), (6), and (8) requires a statement of the questions presented for review, a specification of errors relied upon, and an argument to be contained in the

appeal brief. Appellants have failed to comply with any of these requirements with respect to the constitutional aspects of Regulation E-7 which they mention for the first time in their petition for rehearing.

This court has held that it will not consider matters on appeal which were not first presented to the lower courts[1] and that it will not consider on appeal matters which have not been presented in compliance with Supreme Court Rules 9(e) and 11(5), (6), and (8).[2]

Supreme Court Rule 35 provides in part that:

> The court may order a rehearing of a matter *previously decided* if, in reaching its decision
>
> (1) The court has overlooked, misapplied or failed to consider a statute, decision or principle directly controlling . . . . (Emphasis added.)[3]

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[1] Sanuita v. Common Laborer's Union, 402 P.2d 199, 201 (Alaska 1965). Pollastrine v. Severance, 375 P.2d 528, 531 (Alaska 1962).

[2] Sanuita v. Common Laborer's Union, 402 P.2d 199, 203 (Alaska 1965); Alaska State Housing Authority v. Vincent, 396 P.2d 531, 533 (Alaska 1964); Williams v. DeLay, 395 P.2d 839, 847 (Alaska 1964); Apex Concrete Co. v. Bray, 395 P.2d 514, 517 (Alaska 1964); Isaacs v. Hickey, 391 P.2d 449, 452 (Alaska 1964); Thomson v. Wheeler Constr. Co., 385 P.2d 111, 114 (Alaska 1963); Gregory v. Padilla, 379 P.2d 951, 954-55 (Alaska 1963); McLemore v. Harris, 374 P.2d 410 (Alaska 1962); Veal v. Newlin, Inc., 367 P.2d 155, 157 (Alaska 1961). See: David D. Beck v. Washington, 369 U.S. 541, 553, 8 L.Ed.2d 98, 109, *rehearing denied*, 370 U.S. 965, 8 L.Ed.2d 834 (1962) where similar holdings by the Supreme Court of Washington were sustained.

[3] Supreme Ct. R. 35 states:

(a) Grounds for Petition. The court may order a rehearing of a matter previously decided if, in reaching its decision

(1) The court has overlooked, misapplied or failed to consider a statute, decision or principle directly controlling; or

(2) The court has overlooked or misconceived some material fact or proposition of law; or

This rule was intended to provide a procedure for timely drawing to the court's attention its omission to consider a statute, decision, or principle which was *directly controlling* in a matter which had *previously been decided* by the court. It was not intended as a device for raising questions which had never before been presented to the appellate or lower courts and administrative boards. This court will not consider questions raised for the first time on petition for rehearing.[4]

Appellants allege that their constitutional rights were prejudiced by this court's refusal to permit a dissenting justice to revise his dissent in the light of a revision in the majority opinion. There is no such rule of court, nor is such a practice followed. The practice which is followed by the court is based on the premise that cross comments must end sometime, therefore the dissenting opinion comments freely

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(3) The court has overlooked or misconceived a material question in the case.

A rehearing will not be granted if it is sought merely for the purpose of obtaining a reargument on and a reconsideration of matters which have already been fully considered by the court.

(b) Time for Filing-Form of Petition. An original and three legible copies of a petition for rehearing must be filed within ten (10) days after judgment. The petition must be supported by certificate of counsel that in his judgment it is well founded and that it is not interposed for delay. The petition shall specifically state which of the above grounds exists, and shall specifically designate that portion of the opinion, brief, the record, or particular authority which the petitioner wishes the court to consider. The petition shall be prepared in conformity with Rule 12(b) and when filed shall be accompanied by proof of service on all parties. No petition for rehearing shall exceed three type-written pages. No memoranda or briefs in support of or in opposition to a petition for rehearing shall be received unless requested by the court.

[4] A. F. Estobrook Co. v. Industrial Acc. Comm'n, 177 Cal. 767, 177 Pac. 848 (1918); Holohan v. Melville, 41 Wash. 2d 380, 255 P.2d 899 (1953).

on the majority opinion and the majority then comments briefly on the dissent to the extent necessary to inform the losing party that the points raised by the dissent had in fact been considered by the majority, thereby avoiding petitions for rehearing based on the fact that the court "overlooked, or failed to consider" a controlling point.[5] Where a revision in the text of the majority opinion is made after a dissenting opinion has been written, the dissent would have another opportunity to comment on the change and the majority would have one opportunity to comment briefly on the revision of the dissenting opinion.

While not participating in consideration of the petition for rehearing under this court's established practice, Justice Rabinowitz has authorized the majority to state herein that he has directed the Clerk of this court and West Publishing Company to delete footnote 46 from his dissenting opinion.

Rehearing is denied.

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[5]See Supreme Ct. R. 35 quoted in note 3 *supra*.

[Filed February 10, 1967.]

MANDATE

To: Superior Court of the State of Alaska,
Third Judicial District, at Anchorage.

James A. Watts and Walter B. Blue filed an appeal from a judgment of the Superior Court, Third Judicial District at Anchorage, in Civil Action No. 61-728 entitled "JAMES A. WATTS and WALTER B. BLUE, Petitioners, vs. SEWARD SCHOOL BOARD and BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, Respondents." The case was heard by this court on April 20, 1964. On September 21, 1964 the court filed its written opinion and entered judgment affirming the judgment of the superior court. Appellants filed a petition for a writ of certiorari in the Supreme Court of the United States. The petition was granted on May 3, 1965 and the September 21, 1964 judgment was vacated and the case remanded to this court. On December 7, 1966 this court filed its written opinion and entered judgment affirming in part and setting aside in part certain conclusions of the Seward School Board. Appellants' petition for rehearing was denied on February 2, 1967.

It Is ORDERED:

1. That the Seward School Board's conclusion that appellants were guilty of substantial noncompliance with Board Regulation E(7) is affirmed as a separate and independent cause for their nonretention.

2. That the Seward School Board's original conclusion that appellants were guilty of immorality within the meaning of the statute as it then defined that term, for their part in compiling, reproducing and distributing the Open Letter containing false statements disparaging of the Superintendent is affirmed as a cause for their nonretention.

3. That the Seward School Board's conclusion that appellant Watts was guilty of immorality, as it was then defined by statute, for his activities in soliciting teachers to

join in a private move to oust the Superintendent is affirmed as a cause of his nonretention.

4. That the Seward School Board's conclusion that appellant Blue's speech to the longshoremen's union constituted immorality, as it was then defined by statute, is set aside for not being supported by substantial evidence.

5. Appellees shall recover from appellants costs and attorney's fees as shown below.

WITNESS The Honorable Buell A. Nesbett, Chief Justice of the Supreme Court, State of Alaska, this 10th day of February, 1967.

Costs and Attorney's Fees:

Duplicating appellees' brief	$ 70.00
Attorney's fees	300.00
Total	$370.00

/s/ J. M. McPhetres
JOSEPHINE M. McPHETRES
Clerk, Supreme Court,
State of Alaska

[SEAL]

TRANSCRIPT OF PROCEEDINGS BEFORE THE SEWARD SCHOOL BOARD, NOVEMBER, 1960

[1]

The meeting was called to order by Cecil Casey, President of the Seward School Board. The following Board members answered the roll call: Mrs. Skinner, Mr. McRae, Mr. Burke and Mr. Casey.

MR. CASEY: This is a public hearing, it is not a trial and we will appreciate the cooperation from the audience by not entering into the conversation. The purpose of this meeting is to hold a hearing concerning the non-retention of Mr. Watts and Mr. Blue who were non-retained under the Session Laws of Alaska, 1959. At this time I would like to request to have an opening statement for the record. Mr. Burr is the counsel for the School Board and

MR. WALTON: Let me introduce myself, I am Peter Walton and we want to contest the justification for their non-retention by the Seward School Board as school teachers. They were prior to March 15 delivered letters constituting notices of non-retention to which were attached bills of particulars and I think that we may safely sum up the charges contained in those bills of particulars as these: Both appellants were charged with having been guilty of acts of immorality which intended to bring them in the teaching profession in public disgrace. They were secondly charged with having not complied with certain regulations of the Seward School Board and thirdly they were charged with having carried to the people of Seward a petition for the recall of certain board members. Fourthly they were charged with having assisted with the printing and distribution of a open letter allegedly containing false and misleading statements against the Superintendant with the intent allegedly of injuring the professional standing of the superintendant and allegedly with the intent of destroying community and public confidence in the administration. I take this opportunity to summarize the charges because otherwise I feel that there might be some confusion. These are not what you call concisive statements. The testimony will

show that whatever the appellants in fact did do certainly it was not immoral conduct. The testimony will show that the appellants certainly did not fail to comply with any regulations ever adopted by this Board. The testimony will show that the petition seeking recall of certain board members did not contain statements which could not be substantiated or which were false. And even if the testimony were that they had assisted in the printing and distribution of an open letter which will be put in evidence and even if the evidence did show that these gentlemen did distribute petition seeking recall of certain board members and even if the evidence should show Mr. Blue appeared before a longshoreman's union meeting, none of these constitute immoral conduct. My second point is this rehearing results from a decision from the Board of Education Board of Appeals returning to this Board the matters which it once before considered. I would like to remind the board that in its decision the State Board declared: "This is the first appeal heard by the State Board of Education under the 1960 law accordingly a sufficient and thorough record should be made of non-retention hearings before school boards. Such a record will enable the Board of Appeals to make a more intelligent decision on the basis of the record. In the instant case a thorough and sufficient record is essential for the protection of both the non-retained teacher and the public. And I wish to assure the board and Mr. Burr that we will not in this hearing endeavor to raise technical objections to exclude from evidence matters which we feel the State Board of Appeals desires to have in their records and make the thorough and sufficient record which they have requested be made. We hope also that we will be extended the same courtesy. I am sure we will for there is no doubt in my mind and I am sure there is no doubt in Mr. Burr's mind but that this matter is going to go to the State Department of Education Board of Appeals on another appeal regardless of the outcome of this hearing. And I have just one further comment [2] and I would like to ask

the present members of this board if there are any members here who would like to disqualify themselves from hearing this matter tonight on account of the personal bias and kind of a predisposition or predeliction of the rule in one way or the other and hearing no answer then I would request an opportunity in the nature of [blank] pose certain questions to certain members of the board. Is there any objection to this? Mr. McRae, let me inquire, sir, do you feel that you can impartially hear this matter tonight and do you feel sir that you do not at present entertain in your own mind an opinion as to whether or not these appellants were guilty of the acts with which they have been charged?

MR. MCRAE: I say that I have an open mind.

MR. WALTON: Would you say sir that you have an open mind now.

MR. MCRAE: Yes, I have an open mind.

MR. WALTON: Now Mr. McRae, do you in your own mind feel that these appellants are unethical teachers at this time?

MR. MCRAE: I would say yes.

MR. WALTON: You do. Don't you feel sir that your opinion that they are unethical might have a little bit of influence upon your opinion tonight?

MR. MCRAE: It is up to you to convince me that they are not.

MR. WALTON: You feel the burden is upon the appellants, is that it? I see. It would not be correct would it to say that your mind is open. You have an opinion that is up to the appellants to dislodge.

MR. MCRAE: That is true.

MR. WALTON: Thank you. And it is true, is it not, that you recently stated in a radio speech broadcast on October 30, 1960 "now we all know how one bad apple will spoil the barrel, just imagine what three unethical teachers can do to a school system" Were these your words sir?

MR. MCRAE: Yes.

MR. WALTON: And by three unethical teachers you referred to the appellants and to Mr. William Zwick, did you not?

MR. MCRAE: I didn't refer to anybody in particular.

MR. WALTON: Who were you referring to?

MR. MCRAE: You can take it as it was.

MR. WALTON: Whom did you refer to sir?

MR. MCRAE: I didn't refer to anybody.

MR. WALTON: It was just a coincidence that you picked the number three.

MR. MCRAE: That's right.

MR. WALTON: Now, in the news speech sir, did you not say "through a series of whispering [3] campaign, false statements, unsigned complaints soap box speeches and outright lies they set out to confuse the public." Who were you referring to sir?

MR. MCRAE: I wasn't referring to anybody in particular.

MR. WALTON: Oh, but you were referring to someone when you said "They set out to confuse the public" who would that be sir?

MR. MCRAE: I didn't specify anybody.

MR. WALTON: No you didn't specify, but who were you thinking of?

MR. MCRAE: I was just drawing a picture of what could happen and what did happen.

MR. WALTON: Oh you say sir, that did happen?

MR. MCRAE: It could have happened.

MR. WALTON: Did it happen?

MR. MCRAE: It did happen.

MR. WALTON: And who caused the, and who caused lies to be distributed?

MR. MCRAE: I told you I didn't have anybody, any particular people in mind.

MR. WALTON: Then perhaps it didn't happen at all.

MR. MCRAE: That's what we're having this case for.

MR. WALTON: I would like to inquire if I may of Mr. Casey. Mr. Casey, do you also feel that the burden of

proof in this hearing is upon the appellant to dislodge the opinion that you entertain in your mind as to their guilt of the charges filed?

MR. CASEY: Would you repeat that please, Mr. Walton.

MR. WALTON: You head Mr. McRae state that he has an opinion that these persons, these appellants, have been guilty of the charges levied against them and tonight it is their duty to dislodge that opinion from his mind, have you not? Is that likewise your opinion of the purpose of this meeting?

MR. CASEY: I have an open mind, Mr. Walton.

MR. WALTON: And you have no previous positions to conclude that these appellants are unethical teachers?

MR. CASEY: I have an open mind I came here tonight to again try to solve this problem.

MR. WALTON: I believe you stated sir in a recent radio broadcast that personal personnel difficulties have arisen largely through the self-seeking individuals and their refusal to come even part way. Were you referring to the appellants, sir?

MR. CASEY: I could have been referring to a number of people, Mr. Walton.

MR. WALTON: Who were you referring to sir?

[4] MR. CASEY: To a number of people Mr. Walton.

MR. WALTON: Who were you referring to sir.

MR. CASEY: As I stated.

MR. WALTON: Can you please identify them. Were the appellants among these whom you were referring.

MR. CASEY: I wouldn't say directly anymore so than any others.

MR. WALTON: Were they sir, yes or no.

MR. CASEY: No I don't think they were any more than anybody else.

MR. WALTON: I take it your answer is no.

MR. CASEY: You may take it Mr. Walton.

MR. WALTON: I am going to ask that Mr. McRae and Mr. Casey, particulary Mr. McRae, decline to serve on this board hearing tonight.

MR. BURR: Will you afford me the opportunity of attempting to reestablish these board men.

MR. WALTON: Certainly, proceed.

MR. BURR: First of all, let me state for the record that it's my contention on behalf of the board that the board members as such are entitled to an opinion which I would compare favorably with that of a prosecuting attorney. They admittedly are the people who signed, prepared and signed and caused to be served on each of the appellants the statement of reasons for their non-retention. Understandably they have a biased opinion. Understandably so. I see no reason to disqualify Mr. McRae or any other member of the board for having a firm conviction in their mind. I daresay that they would be ill advised to say otherwise. They would be in effect saying what they have charged in the bill of particulars is not true before we even start and for that reason for the record I would like to tell Mr. McRae and also the president of the board Mr. Casey that while I don't feel they're disqualified for having an opinion as to what they have charged each of these teachers with, I would like to advise them and for the record ask their cooperation in keeping an open mind for the purpose of this hearing and hearing everything including the evidence that teachers Mr. Blue and Mr. Watts present and weighing that as equitably and as impartially as they can as members of this board without regard with what has heretofore taken place. Now if they can promise each of the respondents that they intend to do that I would further advise the members of the board that contrary to the opinions they have expressed it's my feeling that the initial burden of proving the sufficiency of the charges against Mr. Blue and Mr. Watts is on the board and I'm prepared to make that proof. What your private opinion is I'm really not concerned with because I'm assuming that we are in full accord with each of the charges that have been made against Mr. Blue and Mr. Watts. I dare say I wuld recommend dismissal of this case at this point if I was convinced otherwise. Now, please proceed.

MR. WALTON: I take it then that the board members do understand that the board has the burden of proof not the appellants.

[5] MR. BURR: I would request the boards member to be admonished and if they're not convinced after the testimony they hear that the board has established each and every allegation I would again instruct them that they are duty bound to make a decision in favor of the respondents or the appellants.

MR. WALTON: Thank you. I reiterate my request that board members Mr. Casey and Mr. McRae disqualify themselves for reasons as stated here.

MR. BURR: For the record I would like to take this opportunity also of stating that I am not at all sure that this is at all proper at this point, however I have no objections to it if the counsel so requests.

MR. WALTON: Perhaps we could have some affirmative acknowledgement of my request as the either in the form of agreeing to it or declining to disqualify yourselves. This will be one of the matters that the State Board may have to rule.

MR. BURR: Since you are challenging the president of the board have you any suggestion as to his rule on the motion?

MR. WALTON: I ask them to disqualify themselves.

MR. CASEY: Mr. McRae, at this time would you like to disqualify yourself at the request of the appellants.

MR. MCRAE: I don't see how we could have a meeting if we don't have a quorum.

MR. CASEY: I take it then that you do not wish to disqualify yourself then. For the record, Mr. Walton I don't feel that I could disqualify myself.

MR. BURR: For the record I would like to direct two final questions, one to each of the board members. Mr. Mc Rae, do you feel that in spite of the position that you have stated, that you can hear all of the evidence, both for and against Mr. Blue and fairly and impartially at this time without regard to what has taken place before this. To fairly and impartially weigh the evidence and render a decision.

MR. MCRAE: Yes I do.

MR. BURR: And Mr. Casey, do you feel likewise.

MR. CASEY: Yes sir, I do.

MR. BURR: I should like to at this time offer Exhibit No. 1 which is a notice of non-retention directed to Walter H. Blue and also the bill of particulars which is appended to the notice which bears the date of March 19, 1960 and as I recall the earlier hearing acknowledged service of this document.

MR. WALTON: No objections.

MR. BURR: That's Board Exhibit No. 1. I should like to offer Exhibit No. 2 which is a similar type document which is notice of non retention and bill of particulars for Mr. James Watts, Seward Public School teacher. I would like to offer a letter signed by one Jerry Neadrick as Exhibit 3. This letter bears the date of April 23, 1959.

MR. WALTON: Mr. Burr, I would like to see you get that in I think we ought to consider the rules of evidence relaxed and presume you will afford me the same levity, therefore I make no objection on that understanding.

[6] MR. BURR: If you are saying you were about to offer some letters, I have no objections. Exhibit 4 is a statement signed by Mildred Kirkpatrick of the, I beg your pardon, Kirkpatrick Printing Co. by Mildred E. Kirkpatrick.

MR. WALTON: No objection.

MR. BURR: Exhibit 5 is a letter from Charles E. Miller.

(Mr. Walton conferred with his clients at this point.)

MR. WALTON: I will make subject to my client's approval. I will make no objection to the introduction of this letter for such matters as are from its contents are patently within the knowledge of its author, but as to such statements that are patently or apparently hearsay, then to such statements I must raise a formal objection. Now this will go to State Board and of course they will have to weigh it accordingly. This I state while my client is reading the letter and before he has authorized me to make that statement. May I inquire Mr. Burr, I realize all this is going on tape, do you represent to this board that the matters stated in this third

paragraph are matters which were within the personal knowledge of the person who wrote the letter.

MR. BURR: The third paragraph. It would appear to be the recitation of a statement disclosed by a student to the parent.

MR. WALTON: Yes, that is also my understanding and I just wanted to clear it up. Yes, as I stated it may be introduced subject to the qualifications that I posed.

MR. BURR: Exhibit No. 6 is an extract from a conversation between Mr. Condor and Mr. Fabricius on the eighth of September, 1958.

MR. WALTON: Before proceeding further, Mr. Burr, can you tell me is it the board's position that they desire to enlarge the bill of particulars which they earlier delivered to Mr. Blue and Mr. Watts?

MR. BURR: No.

MR. WALTON: Is it the board's intention to attempt to introduce evidence which is not specifically within the scope of the bills of particulars?

MR. BURR: It is not our intention.

MR. WALTON: Do you sir believe that Exhibit 5 comes within the scope of the bills of particulars?

MR. BURR: I would not have offered it if I had thought otherwise.

MR. WALTON: Wouldn't it perhaps have been better to offer the last one in evidence in rebuttal.

MR. BURR: Does it make a lot of difference, it goes in the same record.

MR. WALTON: Apparently then you conceded that it isn't relative as far as the affirming position of the Board goes?

MR. BURR: Oh, I would concede, I won't make a statement on such ironic irrelevancy. I'm extending the exhibit as evidence.

MR. WALTON: Can you please point to me what portion of the bill of particulars directed to Blue does exhibit No. 5 pertain.

[7] MR. BURR: Well, I'm not going to argue Mr. Wal-

ton, the merits of the several exhibits. If you want to make a statement concerning each one or more of the exhibits, feel free to do so.

MR. WALTON: Whether this is introduced as evidence or it is merely identified as Exhibit it still is going to get to the State Department of Education's Board of Appeals.

MR. BURR: I should hope so.

MR. WALTON: And I will just make passing observation that it does not appear to be relevant in any way. That is Exhibit No. 5. May I inquire, how many more of these letters do you intend to introduce?

MR. BURR: Why don't you wait until I complete my offer.

MR. WALTON: I was generous at the offset, but I'm afraid that my generosity might be taken advantage of.

MR. BURR: Why don't you just make the objection for the record and let's proceed.

MR. WALTON: What I want to do now is read it. I may not object.

MR. BURR: Exhibit 7? Did you want to make a statement Mr. Walton concerning that?

MR. WALTON: Wasn't that Exhibit 6?

MR. BURR: Exhibit 6, yes. I'm about to offer Exhibit 7. Exhibit 7 is the open letter to Seward School Board which bears the date of May 18, 1959, and appears to have been signed by the Seward Local of the American Federation of Teachers. Objections. Exhibit 8 is a letter from Mrs. Joyce Carver, former teacher of Kenai School, dated Oct. 30, 1960. Exhibit 9 is a letter signed by Charles D. Archer, dated Oct. 30, 1960.

Now, Mr. Walton, do you desire any or all of these exhibits to be read into the record or are you satisfied to have them tendered. I understand that this is supposed to be a public meeting and if you desire to have them read there is no objections.

MR. WALTON: No, Mr. Burr.

MR. BURR: The record indicates counsel for the respondents has indicated that there is no necessity for read-

ing the proper exhibits. Exhibit 10 is a letter from Morris L. Porter, Kenai, Alaska, bearing no date. Exhibit 12 is the School Board Regulations of Seward, Alaska, 1958.

MR. WALTON: You mean document entitled School Board Regulations?

MR. BURR: Yes. Exhibit 13 is a sworn statement appended to what appeared to be a duplicate copy of Seward School Board Regulations. One composite exhibit.

MR. WALTON: This appears to be a statement signed by Mr. Casey, Mrs. Whitmore, Mr. Howell and Mr. McRae. I'm sure all those persons are present and therefore I am sure that the Seward School Board will not object if I do make an exception to this document. I have attempted to be generous in the other matters because I have assumed that the persons who made the documents were not here and hence could not be called to testify, but that reason is not apparent here, therefore although they may be marked we will not surrender to be introduced over our objections.

MR. BURR: What was Exhibit 11? We don't have Exhibit 11 do we? I should like to offer [8] at this time Exhibit 11 which I neglected to mention and I'll append it as one composite exhibit. It is a transcript of the hearing earlier held in this same matter on the 8th of April, 1960.

MR. WALTON: You don't have to show it to me. My only objection here is a practical one, it's a voluminous document about 60 or 70 pages and I think it serves no useful purpose it's going to go up as exhibit but for that reason we urge that it not be introduced as evidence.

MR. BURR: Exhibit 13 for the record is the statement signed by the school board members to which is appended a copy of the regulations previously offered as Exhibit 12. You've seen that. That completes the exhibits that we have at this time. Do you have any comments as to any of them.

MR. WALTON: May I please see exhibit 12? It says on here exhibit 11. Where is that document which bore

the board members signature. Which one is that? Is that 13?

MR. BURR: 13 yes. At this time I should like to make one composite offer of all of the exhibits 1 through 13 into evidence for the purpose of this hearing. Hearing no objection I request a ruling.

MR. WALTON: Just one moment. I take it Mr. Burr that since the purpose of this meeting is to permit the appellants to confront those who have made statements detrimental to their character, that in addition to your offer you are prepared to guarantee us the right to confront the persons who have made the statements. Is that correct or is that incorrect?

MR. BURR: If this is a rehearing I should assume that you have the same rights that you had in the initial hearing.

MR. WALTON: I don't think you've answered my question.

MR. BURR: And in the initial hearing under the regulations as I understand it you have the right of being confronted with the witnesses whose testimony is to be used and to secure the presence of such witnesses you have the right to subpoena. It is my position you have put on notice the names of the witnesses whose testimony was used by the board to support each of the allegations and you have seen fit it in point of fact to subpoena some of these people. And the fact that you haven't subpoenaed Mr. Sadusky whose testimony was previously taken although not under Oath, which I concede, if you desire at this time to exercise the subpoena rights and to be confronted with Mr. Sadusky I will be happy to comply if it's all possible. If you want to exercise your subpoena rights you certainly can entertain it, I have no objections. And if not, if you don't care to exercise that right I, should like to tender the testimony of Mr. Sadusky as it appears in the previous transcript, as an exhibit. He was subject to cross examination.

MR. WALTON: Let me answer you Mr. Sadusky in a

minute. What about the other persons whose names appear on the letters which are introduced? Making statements which are derogatory and detrimental to the appellants' character. Are those authors also going to be available in order that the appellants may confront them at this time? I am particularly interested in the author of letter no. of exhibit no. 5.

MR. BURR: Exhibit 5 let me see that. Is Mr. Charles Miller present here by any chance?

MR. WALTON: I would like to state for the record that whereas we have exercised our subpoena rights with respect to Mr. Fabricious and Mr. Frampton, we had no inkling of an idea [illegible] [9] could not in anticipation of this hearing attempt to subpoena him.

MR. BURR: Do you desire at this time to exercise your rights to subpoena the persons whose testimony you are now aware is to be used by this board as a basis for supporting each and all of the allegations?

MR. WALTON: We definitely desire to subpoena Mr. Miller.

MR. BURR: I should like to inquire for the record if you have any other request other than Mr. Miller.

MR. WALTON: With regards to, is it Mr. Sandusky, we are prepared to let that old testimony be available for this board and to any higher board to which this matter may be appealed but may I inquire Mr. Miller's first name in order that we may —

MR. BURR: Charles E. Miller. Perhaps we could take his testimony in Anchorage to avoid the necessity of calling him to Seward. Since it pertains to but one of the appellants, Mr. Blue I would be willing to make a reporter available for the purpose of taking his testimony if you choose to request it.

MR. WALTON: Is that so? Would you care to also pay for Mr. Blue's transportation back and forth to Anchorage?

MR. BURR: I can't be so charitable Mr. Walton.

MR. BLUE: I would be willing to go up.

MR. WALTON: May I please see Exhibit 3? May I see

Exhibit 5? Are you prepared to tell us when this was excuted?

(Discussion between Mr. Fabricious and Mr. Burr to answer this question.)

MR. BURR: April the 8th. The night of the first hearing.

MR. WALTON: Well, Exhibit 5 we will object to, we will not object to the introduction of all of the other exhibits except Exhibit 5 and the exhibit wherein the board members certify that such and such regulations were regulations of the board. Which one is that? 13. For purely formal reasons we must object to those whose product is so damaging that we feel that the appellants should at least be confronted with the author before that could be introduced, and besides it appears to be hearsay at that. Could we submit it to the Board for execution of subpoena at this time. Directed to Charles E. Miller. Obviously this subpoena is to be rewritten.

MR. BURR: For the record Mr. Walton I think I think we should also advise you that we will plan to take the testimony of the girl from whom this statement was apparently taken. The daughter of Charles E. Miller. I don't personally know her name.

MR. WALTON: That may be your intention but we will object at that time if we so object.

MR. BURR: We're notifying you at this point that we are going to do this.

MR. WALTON: What is the girl's name.

MR. CASEY: I don't know Mr. Walton.

MR. WALTON: Have you ever talked to the girl?

[10] MR. CASEY: I've heard her name, but no I've never talked with her.

MR. WALTON: Has any of the board members ever talked with her? Could I inquire sir? I take it the answer is no, none of the board members have ever talked with this girl. Very well.

MR. BURR: Put daughter of Charles E. Miller and first name of whom is unknown.

MR. WALTON: I put it Jane Doe Miller, daughter of Charles E. Miller.

MR. BURR: Should we stipulate to take the statements of both of these people consecutively, the same day.

MR. WALTON: Oh, sure. Well, I'm not going to stipulate against this one if you want to take them at the same time. Why don't you fill in the date, Mr. Burr, at my office, perhaps your board members could initial the corrections.

MR. BURR: The subpoena duces tecum?

MR. WALTON: Well, they are not requested to sign the bottom portion. Just the top portion. You strike out dues was taken, you can strike out the whole bottom and we'll prepare copies for service only.

MR. BURR: You want this signed now, to be served?

MR. WALTON: Ya, you might fill in the time.

MR. BURR: It would occur to me that we should have a stipulation from the two appellants that they are willing to appear at a time to be decided upon at a subsequent date convenient to all parties and for that purpose take the testimonies of the two people without a public hearing as such. I could be as public as they wanted. We have no objections to that.

MR. WALTON: We are perfectly agreeable that their deposition may be taken in my office at a date to be fixed by you. However, I wonder how is the board going to rule upon questions which are then going to be asked?

MR. BURR: They'll have to be furnished copies of the statements the depositions.

MR. WALTON: I see. We'll make out objections and let them rule on them later, ok?

MR. BURR: Have you any better suggestion?

MR. WALTON: No.

MR. BURR: We can perhaps recess this hearing until next week if you care and bring the people down here.

MR. WALTON: It's not necessary. May we also stipulate that Mr. Blue may at the same time they give their de-

positions testify with response to their testimony because of course today he doesn't know what they are going to say.

MR. BURR: No objections. With exceptions Exhibits 5 and exhibit 13 Mr. Walton have you any further objections on the proffered exhibits?

MR. WALTON: No objections.

MR. BURR: I should request a ruling from the president of the board Exhibits 1 to 11 excluding exhibit 5. I should offer these exhibits in evidence for the purpose of this hearing.

[11] MR. WALTON: Then we are disputing only Exhibit 13?

MR. BURR: I am offering all of the exhibits except Exhibit 5.

MR. WALTON: Then the issue before the chairman is to rule upon my objections to Exhibit 13? Is it not?

MR. BURR: Yes.

MR. CASEY: I will reserve ruling on that at the present time. If you wish to proceed. I'll hold my ruling at the present time.

MR. WALTON: I take it they're not yet admitted then, is that correct? You have not yet ruled on my objection.

MR. BURR: He has reserved ruling on the point of the exhibit.

MR. WALTON: Therefore they are not yet admitted are they?

MR. BURR: They are marked for identification. I would request the reporter at this time to remind me if I should happen to forget it to renew the tender of all of these exhibits excluding exhibit 5 into evidence and request a ruling from the president of the board.

(The board will call as it's first witness Mr. Benjamin Frampton. Is he present?)

MR. CASEY: Now will you raise your right hand please. Do you swear to tell the truth and nothing but the truth so help you God.

MR. FRAMPTON: I do.

MR. BURR: Mr. Walton, we're not at all sure that this

microphone is picking up everything up. Do you think it would be wise to perhaps to test this?

MR. WALTON: Say, Mr. Burr, I wonder is Mr. Casey authorized by virtue of any law or any authority to administer oaths? Or is this something he has assumed?

MR. BURR: You're a notary public, would you care to administer the oaths?

MR. WALTON: I would prefer you to, it's your witness.

MR. BURR: Very well, would you stand and raise your right hand. Do you swear the testimony you are about to give Mr. Frampton will be the truth, the whole truth and nothing but the truth, so help you God.

MR. FRAMPTON: I do.

MR. BURR: Will you state your full name please sir.

MR. FRAMPTON: Benjamin F. Frampton.

MR. BURR: Your occupation.

MR. FRAMPTON: I'm a teacher.

MR. BURR: And where are you presently employed?

MR. FRAMPTON: I'm employed in the City of Seward, the elementary school.

[12] MR. BURR: And in what capacity are you presently employed?

MR. FRAMPTON: I'm a principal of the elementary school.

MR. BURR: And how long have you been so employed?

MR. FRAMPTON: For eleven years. This is my eleventh year.

MR. BURR: Do you know the appellants in this case Walter B. Blue and James A. Watts?

MR. FRAMPTON: Yes I do.

MR. BURR: Will you indicate by pointing to each of these individuals that you know them.

MR. FRAMPTON: That's Mr. Blue and that's Mr. Watts.

MR. BURR: Let the record indicate that the witness has indicated by pointing to the two gentleman sitting next to Mr. Walton at the counsel table. I should like to request at this time Exhibit 11 please. Mr. Frampton, do you

know each of the appellants in this case to be teachers, or former teachers of the Seward Public School system?

MR. FRAMPTON: Yes I do.

MR. BURR: And would you state for the record whether or not during the year 1959 either or both of these individuals were employed in the Seward school system.

MR. FRAMPTON: Yes I do.

MR. BURR: And would you state for the record whether or not during the year 1959 either or both of these individuals were employed in the Seward School system.

MR. FRAMPTON: Yes they were.

MR. BURR: Were either or both of these individuals employed in the Seward school system during the year 1958, to your knowledge. That's the school year 58 and 59.

MR. FRAMPTON: Yes they were.

MR. BURR: I should like to direct your attention to the spring of the year 1959 and ask you whether or not you recall having any particular conversation with either or both of these individuals with particular reference to the superintendent of the schools, Mr. Fabricious.

MR. FRAMPTON: Yes I have.

MR. BURR: Will you tell me approximately when such a conversation took place if you recall.

MR. FRAMPTON: It was April 28, 1959 before school, that morning.

MR. BURR: Do you remember the approximate time of the day that conversation took place.

MR. FRAMPTON: I can't say definitely, I imagine it was somewhere between 8:30 and 9:00 however.

MR. BURR: Mr. Frampton in your experience as a teacher and a principal in the Seward public school system, would that in your opinion be during school hours for a teacher.

MR. FRAMPTON: According to our regulations it would have been.

MR. BURR: Yes. Now will you tell me if you recall the substance of the conversation that you had with either of the individuals identified as appellants in this case.

[13] MR. FRAMPTON: Mr. Watts came by my office and spoke to me in the morning saying that he would like to see me in my wife's room.

MR. BURR: Your wife is a teacher also?

MR. FRAMPTON: Mrs. Frampton who teaches in the first grade. I went with Mr. Watts down to Mrs. Frampton's room and there he stated that he had been sent as representative of the group, and because he had been a friend of ours for a long time. He wanted to know if we would go along with the movement to oust Mr. Fabricious. He stated that we knew the certification of teachers is not the real issue. He said that he knew I was in the middle and didn't want me to get hurt. He said that they were quite sure they could get Mr. Fabricious and wanted to know if we would go along with them. We told him at that time that we could see no reason why anyone should try to get Mr. Fabricious and we considered he was doing all right and would have take a stand of Mr. Fabricious and the school board. Then we asked Mr. Watts what group was going along with him. Then he said under the circumstances he would rather not say. I believe that ended the conversation.

MR. BURR: Did you have any further conversation with Mr. Watts on that day or any subsequent day to your recollection concerning the same subject matter?

MR. FRAMPTON: I don't recall.

MR. BURR: Mr. Frampton, are you familiar with whether or not there are or there were at that time any regulations of the Seward Public Schools in effect?

MR. FRAMPTON: Yes, I believe at that time we had (end of tape)

MR. BURR: May I ask the reporter what the last question was?

MRS. FISH (RECORDER): Do you recall whether at that time there were at that time any regulations in effect?

MR. BURR: I believe your answer was that there regulations in effect in the spring of 1959.

MR. FRAMPTON: I believe that's correct.

MR. BURR: I should like to hand you Exhibit 12 for

identification and ask you whether or not you can identify that document sir?

MR. FRAMPTON: This is the one I had reference to.

MR. BURR: Would you state for the record Mr. Frampton if you can identify that document.

MR. FRAMPTON: Yes, this is the School Board Regulations that were given to us by the School Board.

MR. BURR: Would you tell me whether or not you had in your possession or at your disposal a copy of such regulations in the spring of 1959.

MR. FRAMPTON: Yes I did.

MR. BURR: Do you know of your own knowledge whether either or both of the respondents or appellants in this case, Mr. Blue and Mr. Watts, had such a document as you have in your hand?

[14] MR. FRAMPTON: Each teacher was supplied with one.

MR. BURR: Will you state whether or not as a principal and as a perfect employee of the Seward Public Schools whether or not it was the responsibility of the several teachers of the system to be familiar with the regulations that are identified as Exhibit 12.

MR. FRAMPTON: Yes they are required to become familiar with it.

MR. BURR: Thank you. I should like to direct your attention to Exhibit 12 for identification and particularly on page 3, subparagraph E, and sub-subparagraph 7 of that paragraph. Are you familiar with that particular portion of the regulations.

MR. FRAMPTON: Yes I am.

MR. BURR: Will you for the record state the substance of that paragraph.

MR. FRAMPTON: Regulations of the School Board. Grievances and complaints and communications from an employee shall be submitted to the Board through the Superintendant.

MR. BURR: At that point I should like to interpose this further question. Do you know whether or not prior to

the conversation that you had with Mr. Watts at the time you have just identified, whether or not he had processed or caused to be processed any complaints to the Seward Superintendent of Public Schools prior to his having the conversation with you and your wife.

MR. FRAMPTON: I do not know whether he did or not, for sure.

MR. BURR: Do you personally know of any such complaints that have been processed.

MR. FRAMPTON: Not up to that point.

MR. BURR: And would it not be one of the functions that would normally be brought to the attention of the principal.

MR. FRAMPTON: I should think so.

MR. BURR: Are you familiar with a bill of particulars that was distributed or caused to have been distributed by either or both of the appellants in this case in the spring or summer of 1959.

MR. FRAMPTON: I don't believe I am.

MR. BURR: May I have Exhibit 7 please. Let the record reflect I am handing the witness Exhibit 7 for identification. Have you ever seen a document such as that Mr. Frampton, before?

MR. FRAMPTON: I don't believe I've seen that before.

MR. BURR: We have no other questions. Your witness.

MR. WALTON: Now this April 28th conversation with Mr. Watts you say took place before school in the morning, I believe those were your words were they not?

MR. FRAMPTON: That's correct.

[15] MR. WALTON: And what time of the morning was that?

MR. FRAMPTON: I would judge it to be 8:30 and 9:00. Teacher's report at 8:30 and this certainly was before the children get there so I could judge it between 8:30 and 9.

MR. WALTON: And what time did you show for duty that day? What time did you go to school that day?

MR. FRAMPTON: I usually got there about 8:00

o'clock. I can't say definitely if it was 8 o'clock that day that I came but I usually arrive about 8 o'clock.

MR. WALTON: Did you have any particular occasion to look at the clock when Mr. Watts spoke with you.

MR. FRAMPTON: No I did not.

MR. WALTON: It might have been prior to 8:30 might it not?

MR. FRAMPTON: It's possible I couldn't say. However, I do know that it was not too long after our conversation that the class children came into the school to the rooms.

MR. WALTON: Are you sir familiar with an organization known as the S.D.T.A., Seward District Teachers' Association?

MR. FRAMPTON: Yes, I am.

MR. WALTON: Are you a member?

MR. FRAMPTON: I am.

MR. WALTON: Were you a member then?

MR. FRAMPTON: Yes, I was.

MR. WALTON: Were you aware of the fact that Mr. Watts was also a member?

MR. FRAMPTON: I certainly was.

MR. WALTON: And were you aware of the fact were you not that the S.D.T.A. had some negotiations with the School Board prior to April 28, 1959.

MR. FRAMPTON: With the School Board?

MR. WALTON: Yes.

MR. FRAMPTON: I'm not certain about that.

MR. WALTON: Do you recall any negotiations having been undertaken in the spring of 1959 between the S.D.T.A. and the Seward School Board.

MR. FRAMPTON: Oh yes, regarding two teachers there was some.

MR. WALTON: What were those negotiations concerning?

MR. FRAMPTON: It was concerning the dismissal of two teachers I believe.

MR. WALTON: Who were they?

[16] MR. FRAMPTON: Mrs. Armstrong and Mrs. Hallenbeck.

MR. WALTON: As a matter of fact sir, you were present at some of the board meetings at which negotiations were had between the Board and the S.D.T.A., were you not?

MR. FRAMPTON: May I state my point.

MR. WALTON: Yes and that would have been on March 30, 1959, would it not?

MR. FRAMPTON: Probably about that time.

MR. WALTON: It was almost a month before Mr. Watts came to you.

MR. FRAMPTON: Yes it would be about that time.

MR. WALTON: And at that prior meeting of March 30, 1959, Mr. Watts in fact represented the S.D.T.A. Grievance Committee, did he not?

MR. FRAMPTON: At that meeting. I believe he was.

MR. WALTON: Therefore you knew at that time that he represented the S.D.T.A. did you not?

MR. FRAMPTON: At that meeting.

MR. WALTON: Yes. The answer sir is what

MR. FRAMPTON: At that time he was a representative.

MR. WALTON: The S.D.T.A.?

MR. FRAMPTON: I believe so.

MR. WALTON: The only reason I'm soliciting the answer is to get it on the tape. And it is a fact, was it not in the March 30th meeting that considerable conflict between Mr. Fabricious and the S.D.T.A.

MR. FRAMPTON: Not that I could see. Not that I could notice.

MR. WALTON: Didn't you detect any difference of opinion between the S.D.T.A. and Mr. Fabricious with respect to the firing of those two school teachers.

MR. FRAMPTON: Not the personnel as a whole. Not the S..D.T.A. as a whole.

MR. WALTON: Then between whom?

MR. FRAMPTON: The minority who perhaps disagreed.

MR. WALTON: Mr. Watts only represented the minority?

MR. FRAMPTON: He agreed with the minority.

MR. WALTON: You're talking about the minority of the S.D.T.A.

MR. FRAMPTON: Yes.

MR. WALTON: I see, whoever it was in the S.D.T.A. that Mr. Watts represented that group disagreed with Mr. Fabricius, correct?

[17] MR. FRAMPTON: Possibly.

MR. WALTON: Well, isn't that what you just said?

MR. FRAMPTON: The minority probably did.

MR. WALTON: Now, when Mr. Watts came to you in your room on April 28, 1959, he referred to a meeting of the S.D.T.A. which was to be held that night, did he not?

MR. FRAMPTON: No, I think he didn't.

MR. WALTON: There was a meeting to be held that night wasn't it?

MR. FRAMPTON: There was a meeting to be held that night but he did not refer to that. He openly stated that he was there to get me to join them to get Mr. Fabricius out.

MR. WALTON: Now tell me sir, how did you know S.D.T.A. was going to have a meeting that night?

MR. FRAMPTON: We had been informed by bulletin.

MR. WALTON: I see. And do you know if Mr. Watts was going to be at that meeting.

MR. FRAMPTON: I didn't know he was going to be there, I assumed he would be.

MR. WALTON: Because he was on the grievance committee, was he not?

MR. FRAMPTON: He was a member of the S.D.T.A.

MR. WALTON: And you know that some of the matters that the S.D.T.A. would take up for consideration that night.

MR. FRAMPTON: That's right.

MR. WALTON: And therefore you assumed did you not that when he said you can come to our meeting, he was referring to that meeting.

MR. FRAMPTON: Mr. Watts did not say "Will you come to my meeting?"

MR. WALTON: Did he not ask you to join a group that evening?

MR. FRAMPTON: No he did not. He asked me to join the group to get Mr. Fabricius out.

MR. WALTON: He didn't indicate when this group was meeting.

MR. FRAMPTON: He did not.

MR. WALTON; I See) And you didn't connect him up with that group at that time.

MR. FRAMPTON: Not with the S.D.T.A. at that time. Certainly not, he didn't even mention it.

MR. WALTON: It's possible as matter of fact that he was referring to the S.D.T.A. isn't it?

MR. FRAMPTON: He made one reference. He said "of course you know the real issue is not the contracts of these teachers".

[18] MR. WALTON:—You say he made one reference - one reference to what?

MR. FRAMPTON: One reference to the teachers and not to the meeting of the S.D.T.A. That he didn't mention to us at all.

MR. WALTON: It's possible in fact that's what he was referring to, is it not?

MR. FRAMPTON: No, he was referring to the non-retention of the teachers, not to any meeting.

MR. WALTON: But the S.D.T.A. as a group was concerned with the non-retention of these two teachers was it not?

MR. FRAMPTON: Yes they were.

MR. WALTON: Did you go to the meeting that night?

MR. FRAMPTON: I did.

MR. WALTON: Was that one of the matters that came up for consideration?

MR. FRAMPTON: It was. I might further say too that it was voted down and the minority left in high tension when it was.

MR. WALTON: Yes, it was that night, was it not that it was put to a vote whether or not the S.D.T.A. should pur-

sue the matter as to the legality of the non-retention of those teacher.

MR. FRAMPTON: No it was put to a vote as to whether the S.D.T.A. should continue further pursuance of backing these teachers or not.

MR. WALTON: The vote was 12 to 11 against it.

MR. FRAMPTON: Yes.

MR. WALTON: And you voted against it I presume.

MR. FRAMPTON: I did.

MR. WALTON: And Mrs. Frampton?

MR. FRAMPTON: I can't say about that.

MR. WALTON: Were you ever at any of the board meetings at which the board adopted any regulations as the regulations of the Seward School Board governing the teachers of the school system.

MR. FRAMPTON: I don't believe so. I didn't attend Board meetings.

MR. WALTON: You don't know of your own personal knowledge whether the board ever did adopt these regulations, do you?

MR. FRAMPTON: Except the regulations were given to me as adopted by the board.

MR. WALTON: Who handed them to you?

MR. FRAMPTON: Mr. Fabricious.

MR. WALTON: Who handed them to you?

MR. FRAMPTON: Mr. Fabricious.

[19] MR. WALTON: Did he then tell you that they had been adopted?

MR. FRAMPTON: It was printed right on the document.

MR. WALTON: And thereby you assumed that they were adopted? Correct?

MR. FRAMPTON: Yes.

MR. WALTON: Do you remember when he handed them to you?

MR. FRAMPTON: I can't remember the exact date.

MR. WALTON: There's nothing in these papers, is there, to indicate whether or not they were ever adopted, or if so,

when? Let the record show I am handing to the witness a copy of Exhibit 12.

MR. FRAMPTON: It states here originally prepared in 1958 and it's a natural presumption that the board adopted them at that time.

MR. WALTON: There's nothing in the pages or on the cover to indicate that they were in fact adopted by the Board, is there?

MR. FRAMPTON: I can't say that it specifically states except that the board would not compile a lot of rules like this and not expect them to be adopted. That would be foolish - you know it as well as I.

MR. WALTON: No other questions.

MR. BURR: No other questions?

MR. WALTON: No.

MR. BURR: I just have one question, perhaps two to redirect to Mr. Frampton. You stated under cross examination that Mr. Watts was a member of the Grievance Committee of this S.D.T.A., whatever that is. What is the S.D.T.A.?

MR. FRAMPTON: That's the Seward District Teachers Association.

MR. BURR: Was that group comprised exclusively of Seward school teachers?

MR. FRAMPTON: It was comprised of teachers of the Seward system and the surrounding district.

MR. BURR: Was that affiliated with or connected with in any manner the American Federation of Teachers to your knowledge.

MR. FRAMPTON: No it was not.

MR. BURR: Now when you were discussing this matter with Mr. Watts on the morning in question in the spring of 1959 concerning his statements "that they were going to get rid of Mr. Fabricous," would you consider a statement by Mr. Watts to that effect which would appear to be premeditated and clandestine and calculated plan to undermine and oust the superintendent of the public schools for whom you and Mr. Watts were then employed. Would you

consider that to be within the scope of the responsibilities of Mr. Watts as a member of, or perhaps in charge of the grievance committee.

MR. FRAMPTON: No I would not consider it.

[20] MR. BURR: I have no other questions.

MR. WALTON: No other questions.

MR. BURR: No other questions. We'll call Mrs. Frampton then.

(Will you raise your right hand please. Do you swear the testimony you are about to give will be the truth, the whole truth and nothing but the truth, so help you God.)

MRS. FRAMPTON: I do.

MR. BURR: Will you state your full name for the record?

MRS. FRAMPTON: Margaret M. Frampton.

MR. BURR: Mrs. Frampton, you are a member of the Seward public school system.

MRS. FRAMPTON: I am.

MR. BURR: And you have been a teacher for how many years.

MRS. FRAMPTON: Twelve years.

MR. BURR: And how many of the twelve years have been spent in the Seward public schools, approximately.

MRS. FRAMPTON: I think it's seven in the Seward public schools.

MR. BURR: In what capacity are you presently employed?

MRS. FRAMPTON: First grade teacher.

MR. BURR: And have you been so employed for the past several years.

MRS. FRAMPTON: Approximately eleven years.

MR. BURR: Mrs. Frampton, do you know the individuals identified perviously, Mr. Watts and Mr. Blue.

MRS. FRAMPTON: I do.

MR. BURR: Will you indicate for the record by pointing toward these individuals.

MRS. FRAMPTON: (Pointing) Mr. Watts and Mr. Blue.

MR. BURR: Let the record indicate that the witness apparently identified correctly the two individuals at this hear-

ing. Mrs. Frampton, you heard the testimony of your husband, Mr. Frampton, earlier, considering the conversation in the spring of 1959. Have you?

MRS. FRAMPTON: That's right.

MR. BURR: I would ask you at this time whether or not you have any independent recollection of such conversation.

MRS. FRAMPTON: I certainly do.

[21] MR. BURR: Would you for the record state your recollection of the conversation that took place in your presence.

MRS. FRAMPTON: Well, Mr. Watts and Mr. Frampton came into my room that morning and Mr. Watts said that he would like for us to join with the group and asked us if we would, to get rid of Mr. Fabricious. He said, he knew, he realized that I was only concerned in this because my husband was principal. I don't know when I gave up my rights as a citizen and a teacher just because my husband was a principal. He also asked that we would go along with them. I said certainly not. I asked, what has Mr. Fabricious done to deserve such a thing as this? He didn't come up with any answer.

MR. BURR: At the time in question, Mrs. Frampton, did you know whether or not Mr. Watts had any official capacity in the organization previously identified as the teacher's group.

MRS. FRAMPTON: You mean, in the Seward District Teacher's Association?

MR. BURR: Yes.

MRS. FRAMPTON: I knew he was a member.

MR. BURR: Did you know whether or not he had any capacity as grievance chairman, or any such title as that?

MRS. ERAMPTON: Yes I knew he was on the committee to meet with the school board.

MR. BURR: Well, knowing that he was in charge of the grievance committee of that group, can you tell me whether or not you were surprised at the position that he would urge that you would oust the principal.

MRS. FRAMPTON: I was completely shocked, yes.

MR. BURR: Would you consider that to have been one of his normally prescribed duties as a grievance chairman.

MRS. FRAMPTON: Not when he was appointed to meet with the school board, no.

MR. BURR: In your eleven years of experience as a school teacher, Mrs. Frampton, have you ever heard of any school teacher sponsoring such a clandestine activity as outing the superintendant when there is a regulation prescribing the manner of doing so.

MRS. FRAMPTON: Not personally, no.

MR. BURR: Mrs. Frampton were you familiar in the spring of 1959 with any regulations that the Seward School system had?

MRS. FRAMPTON: Yes.

MR. BURR: Have you ever had the occasion to consult these regulations.

MRS. FRAMPTON: I read them when they were handed to me.

MR. BURR: Do you recall when they were handed to you, approximately.

MRS. FRAMPTON: No, I couldn't say.

[22] MR. BURR: Well, do you recall whether or not as point of fact, it was before, do you recall whether it was before the conversation took place with Mr. Watts.

MRS. FRAMPTON: Definitely, yes, it was before that.

MR. BURR: Do you know whether or not it was a duty on the part of the school teachers in the Seward public schools to be familiar with any applicable regulations.

MRS. FRAMPTON: It was our duty yes.

MR. BURR: And was Mr. Watts a teacher at the time in question?

MRS. FRAMPTON: Yes.

MR. BURR: I have no other questions.

MR. WALTON: No question. I feel that both counsel are being extremely cooperative in answering leading questions.

MR. BURR: The next witness will be. The next wit-

ness for the board will be Monty Richardson who is a teacher in the Seward Public Schools at the present time and for the record I should like to make this comment that Mr. Richardson was not previously requested to appear and he has done so only at the specific request of myself representing the board. He did not volunteer the testimony in any way, shape or form, so with that comment I'll call Mr. Richardson to the stand.

(Will you raise your right hand, sir. Do you swear the testimony you are about to give is nothing but the truth, the whole truth, so help you God.)

MR. RICHARDSON: I do.

MR. BURR: State your full name.

MR. RICHARDSON: Monty N. Richardson.

MR. BURR: Your occupation.

MR. RICHARDSON: School teacher in the Seward public schools.

MR. BURR: Do you know the respondents, the appelants in this case, Mr. Blue and Mr. Watts?

MR. RICHARDSON: I do.

MR. BURR: Will you identify them for the record.

MR. RICHARDSON: Mr. Watts and Mr. Blue.

MR. BURR: Let the record indicate the witness has apparently identified accurately the two appellants. Are you presently employed with the Seward school system.

MR. RICHARDSON: I am.

MR. BURR: In what capacity?

MR. RICHARDSON: I'm Social Studies teacher in the 7th and 8th grade.

MR. BURR: How many years have you been a school teacher?

MR. RICHARDSON: Eight years.

[23] MR. BURR: And how long have you been employed in the Seward public schools?

MR. RICHARDSON: This is my fourth year.

MR. BURR: I would like to direct your attention to the year 1959, Mr. Richardson, and specifically the spring of 1959, and ask you whether or not you were a member of

the teachers group which has been previously mentioned earlier in this hearing?

MR. RICHARDSON: You mean the Seward District Teacher's Association.

MR. BURR: Yes, does that go by shorter nomenclature?

MR. RICHARDSON: No, that's the Seward District Teacher's Association. The S.D.T.A.

MR. BURR: Were you in the spring of 1959 a member of that group?

MR. RICHARDSON: Yes sir.

MR. BURR: Do you know whether or not Mr. Watts was also a member of that group?

MR. RICHARDSON: He was.

MR. BURR: And Mr. Blue?

MR. RICHARDSON: He was.

MR. BURR: Do you recall whether or not Mr. Watts, in the spring of 1959, had an official capacity in that group?

MR. RICHARDSON: Mr. Watts was placed on the civic and public relations committee to meet with the board on the action pertaining to the non-retention of teachers.

MR. BURR: Do you have any knowledge of any effort or any plans or any scheme or device of that group to oust Mr. Fabricious in 1959.

MR. RICHARDSON: I do not.

MR. BURR: Did you hear any comment made by Mr. Watts to that effect.

MR. RICHARDSON: In his capacity as a representative of the Seward District Teachers Association, he certainly did not represent it.

MR. BURR: Did he ever represent that as an individual, Mr. Richardson, in your presence or as an individual.

MR. RICHARDSON: I would say it was probably mentioned.

MR. BURR: Did Mr. Watts ever solicit your cooperation or your participation in such a thing in the spring of 1959?

MR. RICHARDSON: My participation in ousting the superintendent?

MR. BURR: Yes.

MR. RICHARDSON: As a direct statement in soliciting me to oust the superintendent, I don't recall that he did.

MR. BURR: Well, let me put it a different way. Did he ever suggest to you in your presence that you either cooperate with, or participate in or lend assistance to any plan device, scheme, or otherwise, the objective of which was to remove [24] Mr. Fabricious as Superintendent of the Seward Public Schools.

MR. RICHARDSON: There were certain overtones during the spring of 1959.

MR. BURR: By Mr. Watts?

MR. RICHARDSON: Yes sir.

MR. BURR: Thank you. Now, would you consider those overtones to be within the scope of his responsibilities as a member of the grievance committee of the S.D.T.A.

MR. RICHARDSON: No sir.

MR. BURR: Thank you. I have no other questions.

MR. WALTON: Mr. Richardson, what was your connection with the S.D.T.A. in March, 1959?

MR. RICHARDSON: I was president of the association.

MR. WALTON: And the Public Relations Committees was also known as the Grievance Committee, was it not?

MR. RICHARDSON: We didn't have it listed as a Grievance Committee. I believe it was under the title Civic and Public Relations Committee.

MR. WALTON: It was also known as the Grievance Committee.

MR. RICHARDSON: Well, unofficially we called it the Grievance Committee.

MR. WALTON: Do you remember who also was on the Grievance Committee.

MR. RICHARDSON; I think perhaps I do. I believe Mr. Swick was on that, I think Mrs. Winninghoff, and I believe Mrs. Copeland.

MR. WALTON: And did you appoint those members to that committee?

MR. RICHARDSON: I did.

MR. WALTON: Why did you create this Public Relations or Grievance Committee?

MR. RICHARDSON: It went back to the non-retention of three teachers who had appealed to the Seward District Teachers Association because their non-retention had not been in accordance with the Alaska statutes in giving a bill of particulars. We entered their case and did what we could and appointed these members as a public realtions committee to go to the board and appraise them of the situation that they had not acted in compliance of the law in the non-retention of these two teachers.

MR. WALTON: Were those teachers Hallenbuck, Svedlund, Armstrong?

MR. RICHARDSON: That's right.

MR. WALTON: What about Brown?

MR. RICHARDSON: Mr. Brown was not included in that because I do not think he contested his case. I know little about that.

[25] MR. WALTON: I take it then that you were sympathetic with the efforts to assist those three deposed teachers?

MR. RICHARDSON: As far as the law was concerned, I certainly was.

MR. WALTON: You felt that they had been wrongfully dealt with?

MR. RICHARDSON: As far as the manner of discharge in not complying with the law I didn't think it was done in the correct fashion.

MR. WALTON: And subsequently the S.D.T.A. was represented by Mr. Watts at a meeting with the School Board, was it not?

MR. RICHARDSON: That's correct.

MR. WALTON: And the meeting would have been on or about March 31st, would it not?

MR. RICHARDSON: I think so - I don't have the date, not knowing until an hour ago that I was to appear, I don't have any dates with me but I think it was the latter part of March.

MR. WALTON: I take it that the committee was appointed by you about a week earlier.

MR. RICHARDSON: Pardon.

MR. WALTON: The committee was appointed by you about March 23rd.

MR. RICHARDSON: Yes sir.

MR. WALTON: Would that agree with the approximate date? 1959?

MR. RICHARDSON: Well it would be an approximate date that it was appointed. Yes sir.

MR. WALTON: Now after this appointment and designation of a public relations or grievance committee, did you have any response from Mr. Fabricious concerning the same?

MR. RICHARDSON: We had a response from the Board.

MR. WALTON: Well, let's put it this way. Did Mr. Fabricious come to you directly on March 23rd, 1959 in the Grade School building in the upper hall and discuss this matter with you?

MR. RICHARDSON: We discussed the matter sometime in the latter part of March - I don't know the exact date.

MR. WALTON: On or about the same date you appointed the committee did he not approach you?

MR. RICHARDSON: On that day I would say approximately, he spoke with me.

MR. WALTON: And he spoke with you privately, didn't he?

MR. RICHARDSON: Yes sir.

MR. WALTON: There was no group meeting, just a private meeting upstairs.

MR. RICHARDSON: That's correct.

[26] MR. WALTON: One might even call it clandestine?

MR. RICHARDSON: Well with about 75 students watching it was hardly clandestine.

MR. WALTON: And what was it that Mr. Fabricious said to you sir?

MR. RICHARDSON: Well, I don't have the exact state-

ments that Mr. Fabricious made to me but he did want to know what was going on and what we appointed a committee for.

MR. WALTON: He was pretty upset wasn't he?

MR. RICHARDSON: He wasn't in the happiest frame of mind.

MR. WALTON: He was angry wasn't he?

MR. RICHARDSON: He wasn't in the happiest frame of mind.

MR. WALTON: Will you answer the question - was he angry?

MR. RICHARDSON: What constitutes anger?

MR. WALTON: I'll let you answer that question.

MR. RICHARDSON: I can ask you questions too.

MR. WALTON: No you can't - you answer the questions as I ask them.

MR. BURR: I object to your arguing with the witness.

MR. WALTON: The witness is arguing with me. I intend to ask the questions and I demand an answer. Was he angry?

MR. BURR: You can't demand anything of this witness, Mr. Walton.

MR. WALTON: I disagree I think I can, on behalf of these appellants I can demand that this witness answer the question and I do. Was he angry?

MR. RICHARDSON: He was unhappy.

MR. WALTON: Was he angry - yes or no?

MR. BURR: I would tell the witness that he doesn't have to answer categerically answer that question in a yes or no manner. If you want to explain and use your own method of testifying you are at liberty to do so in spite of what the instructions from the other side are.

MR. RICHARDSON: I'd say that the conversation between Mr. Fabricious and myself on that particular day was not of the most pleasant type and we have had more pleasant conversations in the past other than that one and I don't look back on it as a pleasant conversation.

MR. WALTON: Do you remember him saying these words "Richardson, you are stirring up all this damn trouble"

MR. RICHARDSON: No sir, I don't.

[27] MR. WALTON: Do you remember him saying anything similar?

MR. RICHARDSON: Not in swear words, no.

MR. WALTON: Let's delete swear words then.

MR. RICHARDSON: I think it's a good idea.

MR. WALTON: Then did he? Incidentally, have you ever heard Mr. Fabricious swear during school hours, Mr. Richardson?

MR. RICHARDSON: Not to my recollection.

MR. WALTON: I am going to request that it would be confusing if Mr. Fabricious carries on a monologue while the witness is answering questions and request that Mr. Fabricious wait until his turn to testify comes.

So the answer to my question is no - you don't remember any.

MR. RICHARDSON: Well not in the presence of students, certainly.

MR. WALTON: Well, then not in the presence of students. Do you ever remember hearing Mr. Fabricious use profane language in school hours on school premises?

MR. RICHARDSON: I would say that at certain times, and again I emphasize not in the presence of students, that he might have dropped a few slang words here or there.

MR. WALTON: I said swear words.

MR. RICHARDSON: I say slang words.

MR. WALTON: Then the answer would be no he never used swear words in your presence?

MR. RICHARDSON: I still say that he just dropped a few slang words.

MR. WALTON: Mr. Casey I am going to ask that this witness answer questions. It is a simple question. The question is simply this. Have you sir ever heard Mr. Fabricious use swear words, profane words on school premises in school hours?

MR. BURR: I am going to the question that it's wholly immaterial, irrelvant. Mr. Fabricious is not on trial and I'll interpose this objection to the whole line of testimony.

MR. WALTON: Oh, very well, then we are going to suddenly not become charitable to each other's questions. I'm perfectly willing Mr. Burr to let all the facts come out - that's what the State Board wants and I'm sure that's what this Board wants.

MR. BURR: This hearing is not designed to try the Supt. of the schools of Seward and I'm going to object to any effort to intimidate this witness into making statements concerning anything that Mr. Fabricious said unless it bears directly on Mr. Blue or Mr. Watts.

MR. WALTON: I resent your remark that I'm trying to intimidate the witness. Because I don't think that I am.

[28] MR. BURR: Let me amend to suggestive statements, extract suggestive statements from the witness with that correction I'll let the objection stand.

MR. WALTON: Please rule Mr. Casey. Should the question not to be answered?

MR. CASEY: I don't think Mr. Richardson has to answer that question unless he so desires and I would say you are overruled Mr. Walton.

MR. WALTON: May I inquire of the chairman is the chair's position that witnesses need not answer questions if they do not desire to do so?

MR. CASEY: Well, to a certain point Mr. Walton you go quite far sometimes in trying to force a witness and he was willing up to a point and I think we should get all the testimony that we need but if you are going to tell him what to say and how to answer it, no I don't think he has to.

MR. WALTON: Then you object to the question, is that it; I won't argue with the chairman. No other questions.

MR. BURR: Just one further question. Mr. Richardson I would like to hand you Exhibit 12 and ask you if you can identify that document please - call for identification.

MR. RICHARDSON: I think so.

MR. BURR: I direct your attention to the third page of Exhibit 12 and subparagraph 7, as I recall. Have you ever

seen or are you familiar with that particular portion of regulations.

MR. RICHARDSON: Oh yes, I read it.

MR. BURR: And had you read that portion of the regulations prior to the spring of 1959?

MR. RICHARDSON: Yes.

MR. BURR: I have no other questions. Thank you Mr. Richardson.

(Next witness will be Mr. Blue. Do you swear the testimony you are about to give will be the truth, the whole truth and nothing but the truth, so help you God.)

MR. BLUE: I do.

MR. BURR: Have a seat please? Will you state your full name please.

MR. BLUE: Walter B. Blue.

MR. BURR: You are the same Walter B. Blue that is a respondent or an appellant on trial in the present hearing before the Seward School Board.

MR. BLUE: Yes sir.

MR. BURR: Mr. Blue did you receive a letter identified as a bill of particulars and also a notice of non-retention from the Seward School Board previously identified in this hearing as Exhibit 1 of the board. I will hand you Exhibit 1 and have you identify it. Did you answer yes?

MR. BLUE: Yes.

MR. BURR: Now, Mr. Blue in the spring of 1959 were you an employee or school teacher of the public school system?

[29] MR. BLUE: Yes sir.

MR. BURR: How long prior to that time had you been a school teacher?

MR. BLUE: About 15 years.

MR. BURR: With the Seward school system approximately how long?

MR. BLUE: Fifteen years.

MR. BURR: With the Seward school system?

MR. BLUE: Yes sir.

MR. BURR: And in what capacity?

MR. BLUE: I was a instructor in the High School.

MR. BURR: Had you held that position continuously for these years?

MR. BLUE: Yes sir.

MR. BURR: Had you ever held a position higher than a school teacher with the system.

MR. BLUE: No sir. Let me qualify that sir. I once received a telegram which gave me a title that I had never been officially apprised of as a matter of temporary experience, but actually I had no other position.

MR. BURR: But you've never been a principal of schools?

MR. BLUE: No sir.

MR. BURR: What is your specialty in the school system?

MR. BLUE: Social sciences.

MR. BURR: Have you taught that continuously for 14 years?

MR. BLUE: Yes sir.

MR. BURR: What is your educational background Mr. Blue?

MR. BLUE: Bachelor of Arts from Washington State University, and I don't remember how many graduate hours since that time in various subjects.

MR. BURR: You don't recall how many graduate hours?

MR. BLUE: No sir.

MR. BURR: You have a Bachelor's degree only?

MR. BLUE: Yes sir.

MR. BURR: You've never taken, never completed the requirements for a Master's degree?

MR. BLUE: No sir, started them.

[30] MR. BURR: Pardon.

MR. BLUE: Started them only, haven't finished them.

MR. BURR: Then in 14 years of teaching you are still a Bachelor of Science.

MR. BLUE: Yes. No, Arts, I beg your pardon.

MR. BURR: Now, Mr. Blue in the spring of 1959 were you a member of the organization previously identified as the Seward District Teacher's Association.

MR. BLUE: Yes sir.

MR. BURR: And how long had you been a member of of that organization.

MR. BLUE: I was a charter member - from the time of its inception.

MR. BURR: Do you know whether or not in the spring of 1959 Mr. Watts had any official capacity in that group?

MR. BLUE: Yes sir.

MR. BURR: Will you tell me what that was if you know.

MR. BLUE: He was a member of the board of that group and from the testimony here I recall he was a member of the grievance committee.

MR. BURR: Is that your knowledge or is that second hand?

MR. BLUE: I think I know it of my own knowledge.

MR. BURR: Did you have any official capacity in this group Mr. Blue?

MR. BLUE: Yes, I did, I think it was called Member-at-Large of the Executive Board, or something like that.

MR. BURR: A member at large of the Executive Board?

MR. BLUE: I believe that is what the title was.

MR. BURR: How long had that organization been in effect as of 1959?

MR. BLUE: I don't recall. 5 or 6 years I think.

MR. BURR: And had you held any official positions with that group since its inception other than being a charter member.

MR. BLUE: Not that I recall.

MR. BURR: Will you tell me whether or not there had been a greivance committee in existence for the entire period of this group. The essence of the group.

MR. BLUE: Including 1959.

MR. BURR: Yes.

MR. BLUE: Yes, in the year 1959 there was.

[31] MR. BURR: Was there a period of a number of years prior to that there was no grievance committee.

MR. BLUE: I don't recall one.

MR. BURR: What was one of the original purposes of the organization of this group? Being a charter member I'm assuming that you are aware of it.

MR. BLUE: Well, it had its social aspects, I suppose that general educational study, welfare of teachers, and so forth, were elements of its, were some of its objectives.

MR. BURR: Would you say that it was primarily a social group?

MR. BLUE: Oh, perhaps, half social, half official.

MR. BURR: What official capacity did this group have with the Seward Public school system.

MR. BLUE: It was not a part of Seward Public School System - it was simply a local organization of teachers.

MR. BURR: Was this group incorporated?

MR. BLUE: No sir.

MR. BURR: Was it a non-incorporated association?

MR. BLUE: Well, let me qualify that statement. It was an ultimate and branch of a NEA complex.

MR. BURR: NEA complex. What's that?

MR. BLUE: The National Education Association was the parent group, there was the state group and then finally coming down to the local group which was the SDTA was formed.

MR. BURR: Let me rephrase my, or let me restate my original question now, did it have in the spring of 1959, have any official liaison with the Seward Public School system?

MR. BLUE: Prior to 1959?

MR. BURR: Prior to or subsequent to.

MR. BLUE: I believe it did. Yes sir.

MR. BURR: Will you tell me what official relationship it had with the Seward Public Schools.

MR. BLUE: It seems to me that it negotiated with the School Board over a matter of a rise in salary sometime previous, I don't remember the year.

MR. BURR: Would this have been an informal solicitation of the support of the Board for an increase in Salary distinguished from an official request from this group.

MR. BLUE: I should say mostly informal.

[32] MR. BURR: So if you were to compare the activities with a group such as the American Federation of Teachers, you would categorize it as being one with informality rather than formality.

MR. BLUE: I believe so.

MR. BURR: So, being an informal organization, would it not be true that this organization had no official liaison or relationship with the Seward Public School System?

MR. BLUE: Probably so.

MR. BURR: Will you tell me what official connection it had with the Seward Public School System as such?

MR. BLUE: I perhaps cannot answer that question.

MR. BURR: You are and were a charter member of this group are you not and were you not?

MR. BLUE: Yes sir.

MR. BURR: Will you tell me being a charter member and being certainly presumed to be familiar with what this group and is, will you tell me whether or not, and if so, in what capacity this group had any official liaison with the Seward Public School System?

MR. BLUE: On occasion it had its meetings in the school building as the meetings were sometimes social in character, sometimes for the purpose of general discussion on the matter of teacher welfare, or educational problems.

MR. BURR: Is it, was it during the spring of 1959 the only teachers group in existence in Seward to your knowledge.

MR. BLUE: When does the spring begin and end?

MR. BURR: For the purpose of this discussion I'll say the first of the year is the commencement of spring.

MR. BLUE: As far as I know at the first of the year it was the only organization or group.

MR. BURR: There was no active group of the American Federation of Teachers in Seward?

MR. BLUE: No sir.

MR. BURR: Is there now?

MR. BLUE: Yes sir.

MR. BURR: Are you a member of such group?
MR. BLUE: I am.
MR. BURR: Does this previous group still exist?
MR. BLUE: The S.D.T.A.?
MR. BURR: Yes.
[33] MR. BLUE: As far as I know it does.
MR. BURR: As a charter member of this group and being a member of in the spring of 1959, Mr. Blue, will you tell me as to whether or not that group had any license, or any express authority, now wait a minute, had any implied or express authority as a group to take any action of any type, nature, or description to oust, and I use the word oust, the superintendent of public schools, Mr. Fabricious?
MR. BLUE: Not that I know of.
MR. BURR: And if this group took any such action or devised or caculated any such plan, would you say it was wholly without authority.
MR. BLUE: Yes sir.
MR. BURR: Now what you are telling me is that Mr. Watts, your constituent in this organization, was acting without authority, when he solicited the cooperation of your fellow school teachers to oust Mr. Fabricious.
MR. WALTON: Now I wish to object. This is really an unfair question. He has not testified to any and Mr. Burr knows very well and I think Mr. Burr knows better.
MR. BURR: Do you understand the question?
MR. BLUE: I understand the question.
MR. BURR: Will you answer please?
MR. BLUE: No sir I cannot testify for what Mr. Watts did.
MR. BURR: You know Mr. Watts to have been a member of the grievance committee in the spring of 1959?
MR. BLUE: Yes sir.
MR. BURR: Well, would you say that as a member of the grievance committee Mr. Watts was acting on the behalf of the Seward District Teachers Association?
MR. BLUE: When sir?
MR. BURR: In the spring of 1959.

MR. BLUE: In what connection?

MR. BURR: Well, I'm talking of at the time that he had the conversation with the two Framptons, Mr. and Mrs. Frampton.

MR. BLUE: I didn't know about that.

MR. BURR: Well, were you a member of the group at that time?

MR. BLUE: I was.

MR. BURR: Were you familiar with the capacity of Mr. Watts at that time as being a member of the grievance committee?

MR. BLUE: Yes sir.

[34] MR. BURR: If Mr. Watts as a member of that grievance committee solicited the cooperation of fellow school teachers to oust the superintendent, in your opinion would it have been an authorized function of your group?

MR. BLUE: It would not have been an authorized function.

MR. BURR: Thank you. Can I have Exhibit 7. I should like to hand you exhibit 7 for identification, Mr. Blue, and ask you if you can identify it.

MR. BLUE: Yes sir, I can.

MR. BURR: Was your answer yes?

MR. BLUE: Yes sir.

MR. BURR: Have you ever seen such a document as that before tonight?

MR. BLUE: Yes sir.

MR. BURR: Will you tell me whether or not you are one of the authors of this document?

MR. BLUE: To the extent that I am a member of the American Federation of Teachers and it was authorized by that group, yes.

MR. BURR: And it was what?

MR. BLUE: To the extent that it was authorized by the American Federation of Teachers and to the extent that I am a member of that group, yes.

MR. BURR: Are you telling me that the American Federation of Teachers drafted this document?

MR. BLUE: I am.

MR. BURR: And will you tell me who in the American Federation of Teachers is the author of this document, or do you know?

MR. BLUE: It was a fairly large group comprised of approximately two-thirds of the teaching staff and it was a long time ago that this was drafted, I don't believe I recall just who all was involved in the writing of it.

MR. BURR: Did you contribute any portion of this document?

MR. BLUE: Yes, I did sir.

MR. BURR: Did Mr. Watts contribute any portion of it, do you know?

MR. BLUE: I think so.

MR. BURR: Well, do you know as a matter of fact, whether he did or didn't?

MR. BLUE: I don't recall specifically, no.

MR. BURR: During the spring of 1959, did you have occasion to cause this document to be reproduced in Seward, Alaska.

MR. BLUE: I'm not certain I understand the meaning of the question.

[35] MR. BURR: By reproduce I mean make other copies of it.

MR. BLUE: Do you mean did I make other copies of it?

MR. BURR: Did you cause or having anything to do with the reproduction of this document?

MR. BLUE: Yes sir I was an officer of the American Federation of Teachers, I called the printing company, find out what the prices were and authorized them to print copies of it.

MR. BURR: Was the American Federation of Teachers an active organization in and about the city of Seward, Alaska, in the spring of 1959?

MR. BLUE: When is the spring?

MR. BURR: I'm making particular reference to the month of May.

MR. BLUE: Yes sir, I believe it was in the month

of May that the organization was formed. I believe it was organized in May.

MR. BURR: In 1959?

MR. BLUE: I believe so.

MR. BURR: Who was the first president of this group?

MR. BLUE: I was.

MR. BURR: And who was the secretary & treasurer?

MR. BLUE: I don't recall if we had a secretary-treasure. We had two separate men.

MR. BURR: How many members in your group at that time were Seward Public School Teachers?

MR. BLUE: I believe all of them were.

MR. BURR: What percentage of the members in this group, let me rephrase the question - what percentage if you know of the entire teaching staff of the Seward Public School system were members of your group?

MR. BLUE: Nearly all, approximately two-thirds.

MR. BURR: Two thirds of the number?

MR. BLUE: I beg your pardon - will you restate the question?

MR. BURR: What percentage of the entire teaching staff of the Seward Public Schools were members in May of 1959 of the American Federation of Teachers Local in Seward.

MR. BLUE: 18 people, which was approximately 64%.

MR. BURR: Sixty-four % of the teachers were members.

MR. BLUE: Yes.

MR. BURR: And this you are stating from your own personal knowledge?

[36] MR. BLUE: Yes sir.

MR. BURR: Would you say that the 64% membership was aware of and had a hand in the preparation of exhibit 7?

MR. BLUE: Yes sir.

MR. BURR: And did each, did all of the members of that Seward local have knowledge of this document prior to its republication - or reproduction?

MR. BLUE: The hesitation here is over the matter of dates.

MR. BURR: It bears the date of May 18, 1959.

MR. BLUE: That would be after school was out, so you understand that between school was dismissed in the spring teachers teachers began to disburse so that it may be that they were not all at Seward at that time.

MR. BURR: So you don't have any present recollection of how many or what percentage of your membership actually know of and was familiar with this document?

MR. BLUE: Yes sir - not more than two would have been gone by that time I should say.

MR. BURR: Not more than two were gone? Would you say that the balance of these people had first hand information of this document.

MR. BLUE: That's right - personal.

MR. BURR: Prior to it's reproduction?

MR. BLUE: That's my personal feeling sir.

MR. BURR: And you were president of the Seward local of the American Federation of Teachers?

MR. BLUE: Yes sir.

MR. BURR: Was it one of your responsibilities to authorize the dissemination of this document?

MR. BLUE: To what?

MR. BURR: Did you in your capacity as president of the local authorize the dissemination of this document, Exhibit 7?

MR. BLUE: No it was group action - it was done by a vote of the group.

MR. BURR: Pardon?

MR. BLUE: It was done by a vote of the group.

MR. BURR: At any particular meeting?

MR. BLUE: Yes sir.

MR. BURR: Do you recall the meeting?

MR. BLUE: I don't know if I can recall the precise date or not. The question would have to have been 1 or 2 days perhaps before the dates of publishing.

[37] MR. BURR: Did you, or did your organization keep minutes in the spring of 1959?

MR. BLUE: Yes sir.

MR. BURR: Do you have those minutes available?

MR. BLUE: I believe so, sir.

MR. BURR: Would you be willing to stipulate the admissibility of these minutes as an exhibit in this record?

MR. BLUE: Yes sir.

MR. BURR: Would you produce them and make them available when this record is printed?

MR. BLUE: I don't understand your question.

MR. BURR: The minutes of the meeting next preceeding May 18, 1959, of the American Federation of Teachers Local, whatever it is?

MR. BLUE: No. 1347.

MR. BURR: Would you be willing to stipulate that a copy of these minutes be made a part of this record?

MR. BLUE: Yes sir.

MR. BURR: Well, I should like to offer such an exhibit and have it identified adn marked as an exhibit in evidence. Exhibit 14.

MR. WALTON: Let me read first. I haven't actually read it myself. Mr. Burr, here's the original of the minutes of the meeting of May 17, AFT, in making them available we would like to have the original returned to us in order that copies may be sent with the record.

MR. BURR: No objections - I'll offer this exhibit as Exhibit 14 in evidence and request that the original be returned to some authorized representative of the local and that a copy thereof, a certified true copy thereof be appended as exhibit - exhibit 14.

MR. WALTON: Mr. Casey, may I please examine it if Mr. Burr does not wish to.

MR. BURR: I should request that the document not be marked.

MR. WALTON: I agree - I was just going to write the names Elbe, Campen, Hoogland.

MR. BURR: I notice those minutes are not signed - perhaps we could have the witness identify as being an accurate statement of the minutes. I should like to hand you Exhibit 14, Mr. Blue and ask you if you concede that to

be an original copy of the minutes of the local for the day in question?

MR. WALTON: May I interject - if you know.

MR. BURR: For the record, Mr. Walton, I should like to restate the answer of the witness that he has identified Exhibit 14 as being a copy, or the original of the minutes of the meeting of the Seward chapter of AFT held on May 17, 1959 at which 13 members were present.

[38] MR. BURR: Mr. Blue are you familiar with a document which is entitled Seward Public Schools School Board Regulations - a copy of which has been marked as Exhibit 12? Your answer is yes?

MR. BLUE: Yes.

MR. BURR: When did you first become familiar with this document?

MR. BLUE: I don't remember the publication date - I believe it was in 1958 perhaps 1959.

MR. BURR: I would like to direct your attention to paragraph 7 on page 3 and ask you whether or not you ever had occasion to read that document - that portion of it?

MR. BLUE: Yes mean this part that says any employee or group of employees may at any time appeal to the board.

MR. BURR: I'm making particular reference to the entire transcript, not a portion taken out of the context, Mr. Blue.

MR. BLUE: Or any grievances or complaints shall be submitted to

MR. BURR: Shall

MR. BLUE: The Superintendent and in addition any employee shall

MR. BURR: Yes - now were you familiar with that portion of this regulation in the spring of 1959?

MR. BLUE: Yes sir, I was.

MR. BURR: Will you tell me what if any official connection with or relation with the Seward Public Schools, the Seward Chapter of the AFT have in May, 1959.

MR. BLUE: What official relationship we had, if any?

MR. BURR: Yes.

MR. BLUE: That's a difficult question to answer because it seems like part of the time the Board recognized our existence as a group and part of the time it did not.

MR. BURR: Perhaps you didn't understand my question. Do you know of your own knowledge whether the Seward local of the AFT had any official recognition from the Seward Public Schools in May 1959?

MR. BLUE: Sometimes they answered our letters addressing us by our proper names.

MR. BURR: Did you consider the Seward local to be the bargaining representative of the School teachers in the Seward Public Schools.

MR. BLUE: That would be the ultimate objective of the organization - you understand it was a young group, at the time.

MR. BURR: Did you consider in May 1959 the Seward local, or the Seward chapter of the AFT to be in fact, the bargaining representative of the school teachers of the Seward Public School System?

[39] MR. BLUE: Not for all of them, for approximately 2/3 of them.

MR. BURR: And as a bargaining representative for approximately 2/3 of the school teachers, I should like to now ask you whether or not that authorization included the power on behalf of the group to sponsor or be a part of any plan, or device, or scheme or attempt to remove the superintendent of public schools?

MR. BLUE: No, that was not one of its objectives, no.

MR. BURR: Would that have been one of its authorized functions.

MR. BLUE: Oh, I suppose if there were reasons for it.

MR. BURR: Is there any doubt in your mind as to whether or not that group had such authorization in the spring of 1959 in the month of May, particularly?

MR. BLUE: You mean authorization to oust the superintendent?

MR. BURR: Yes.

MR. BLUE: No such authorization was ever assumed by that group, no.

MR. BURR: Did that group have the authority or the power to distribute information unfounded, unsupported information I might add, the objective of which was to remove the - I should like to complete my question Mr. Walton then you may object - the objective of which was to remove the superintendent of public schools?

MR. BLUE: May I have the question again?

MR. BURR: Will you read it back - I'll restate it - Did the Seward chapter of the AFT in the month of May, 1959 have any authority, express or implied as a group to sponsor or to be a part of any plan, or to distribute any information to the public of Seward, the purpose of which was to cause the removal of the superintendent of schools, George Fabricious?

MR. BLUE: No sir, it did not.

MR. BURR: Do you know whether or not that was one of the designed objectives of Exhibit 7, which you've identified?

MR. BLUE: To oust the superintendent?

MR. BURR: Yes.

MR. BLUE: I know that it was not the objective and it so states in my letter.

MR. BURR: Will you state whether or not this document was reproduced at your directions?

MR. BLUE: It was I who called the Kirkpatrick organization to get prices and soforth, and I was one of those who carried out this function of having it printed, representing the entire union, yes sir.

MR. BURR: Would you say then that it was at your direction that this document was reproduced?

MR. BLUE: No sir.

[40] MR. BURR: Did anybody else in your group to your knowledge give the authorization of the reproduction of this document, Exhibit 7?

MR. BLUE: The authorization if it was a group matter, it wasn't an individual matter, sir.

MR. BURR: Would you say by that that it was a motion that was passed on by the membership?

MR. BLUE: Yes sir.

MR. BURR: As a result of that action on the part of the American Federation of Teachers, Seward Local, would you state whether or not this document was in fact reproduced?

MR. BLUE: It was reproduced, yes sir.

MR. BURR: And would you state whether or not Mr. Watts had anything at all of an official nature to do with the reproducing of that document, Exhibit 7.

MR. BLUE: I believe he was a member of the committee that did some revising work on it.

MR. BURR: I'm not speaking of the revision - I'm talking of Exhibit 7. Mr. Blue do you know whether or not Mr. Blue had any connection with the reproduction of that document - I'm sorry, Mr. Watts.

MR. BLUE: Yes, virtually every member of the organization did in one way or another.

MR. BURR: Do you know whether or not Mr. Watts, in point of fact, carried this document or a similar copy of it to the Kirkpatrick firm in Seward and caused it to be reproduced in the approximate number of 500.

MR. BLUE: I know that he did not.

MR. BURR: Do you know whether or not anybody at his direction did.

MR. BLUE: Nobody at his direction did.

MR. BURR: Do you know whether or not this document was approximately reproduced?

MR. BLUE: Except sir as he was a voter of the group.

MR. BURR: Did you either you or Mr. Watts personally appear at the office of Mrs. Kirkpatrick?

MR. BLUE: I did yes sir - not Mr. Watts.

MR. BURR: And what was the purpose of your appearing at or about that time in Mrs. Kirkpatrick's office?

MR. BLUE: To take the draft to her for printing.

MR. BURR: Then it was you who carried this document to Mrs. Kirkpatrick?

MR. BLUE: I don't remember if it was I or another member along with me who carried it.

MR. WALTON: Mr. Burr we might be able to help you. I think we will be willing to stipulate to a lot of things along this area. If you'd like to ask me I think I can stipulate.

[41] MR. BURR: After this document was reproduced Mr. Blue, will you state whether or not you personally distributed this document in and about the city of Seward?

MR. BLUE: Personally distributed?

MR. BURR: Personally hand carried it or caused it to be hand carried to other members of the public at large in Seward?

MR. BLUE: I don't remember who did the mailing, sir.

MR. BURR: Is it possible that you did and don't recall?

MR. BLUE: It's possible, yes sir.

MR. BURR: Do you know whether or not Mr. Watts did? personally?

MR. BLUE: I don't recall. Yes sir, I beg your pardon, I do remember that he did.

MR. BURR: He did but you don't recall whether you did?

MR. BLUE: No sir.

MR. BURR: This has been a subject of some no small amount of controversy in the last year and a half, has it not?

MR. BLUE: It has - yes sir.

MR. BURR: But you don't have any recollection of whether or not you participated?

MR. BLUE: Oh, I participated in the drafting of it yes sir, I don't remember whether mechanically I carried it in distribution or not, - it's possible that I did.

MR. WALTON: Mr. Burr, I think I can help you here. Mr. Blue is not trying to be evasive, and I wouldn't want any misunderstanding to arise. Mr. Blue, can we stipulate that you participated in the distribution of the document?

MR. BLUE: Certainly.

MR. WALTON: Very well, we so stipulate - has been charged - admitted.

MR. BURR: Prior to the distribution of Exhibit 7 in and about Seward, Alaska, Mr. Blue, will you tell me whether or not of your own personal knowledge, there had been processed any grievances which would correspond to any or all of the items designated on exhibit 7 to the superintendent of public schools, Mr. Fabricious?

MR. BLUE: No sir, I think not.

MR. BURR: And if so, please identify which of these had been processed.

MR. BLUE: I remember one had. I believe that item no. 3 had.

MR. BURR: You believe?

MR. BLUE: Yes sir.

MR. BURR: Well, is there some question in your mind about it?

MR. BLUE: No sir, except that I had it from testimony of other people therefore [42] I believe it.

MR. BURR: Well, do you know of your own personal knowledge whether it had been or had not been?

MR. BLUE: You said processed sir, now what do you mean by processing fabrics?

MR. BURR: Let me, so that there will be no misunderstanding, let me rephrase it. How many of the items on the bill of particulars of exhibit 7 of your own personal knowledge had been communicated directly to George Fabricious in his capacity as superintendent of public schools of Seward prior to the distribution of that document in Seward?

MR. BLUE: Number 1, number 3, number 4, number 5 wouldn't be a matter of communication, it would hardly fit your question, number 6 of course involved Mr. Fabricious himself and he would know about that, I wasn't there, number 8 of course Mr. Fabricious was involved and I was a witness to, number 9 was outside of my own purview, I know of it from other people, b of number 9, I don't know if it had been communicated to him or not.

MR. BURR: Number 9 was that?

MR. BLUE: 3 of number 9.

MR. BURR: You don't know if that was communicated?

MR. BLUE: To him, or not, previously, no sir I don't.

MR. BURR: But in spite of this lack of knowledge you still participated in the distribution of exhibit 7.

MR. BLUE: Well, the point you seem to be getting at is the radius of number 7 in the element.

MR. BURR: I'm not getting at anything - just want you to answer my question.

MR. BLUE: Will you restate it please?

MR. BURR: Do you have that question? In spite of your lack of knowledge of the fact that this was not brought to the attention of Mr. Fabricious, particularly the reference I'm making to the 9b of exhibit 7, in spite of your lack of knowledge in this having been brought to Mr. Fabricious' attention, is it your testimony that you did in fact cause the distribution of this document in Seward.

MR. BLUE: Yes, a copy of this was sent to him on the day of distribution.

MR. BURR: You haven't answered my question, Mr. Blue. In spite of your lack of knowledge personally that this had been previously brought to Mr. Fabricious' attention?

MR. BLUE: I don't know what all was brought to Mr. Fabricious' attention.

MR. BURR: You indicated that you lacked personal knowledge that this was brought to his attention.

MR. BLUE: I have indicated that some things I knew were brought to his attention. I can't say as to all of them whether or not they were brought to his attention.

[43] MR. BURR: So there are some of the items on Exhibit 7 that you lacked knowledge in point of fact whether these were brought to the attention of Mr. Fabricious?

MR. BLUE: You understand that some of these are as you stated in qualifying terms and it's very difficult to answer a question like that. The word apparently, for example, how do I know?

MR. BURR: Let me rephrase it - perhaps I'm making it too difficult for you. Would you consider all of the items in Exhibit 7 to be in the nature of a complaint, grievances, or whatever you choose to designate them as?

MR. BLUE: Do you mean all of the enumerated ones?

MR. BURR: I mean everything on exhibit 7.

MR. BLUE: I believe it may be simplified by saying that.

MR. BURR: I don't want you to cimplify any question and I want you to answer it.

MR. BLUE: Will you repeat the question please?

MR. BURR: Do you have that question?

RECORDER: Would you consider all of the items on exhibit 7 to be in the nature of complaints or grievances - I mean all of the items.

MR. BLUE: Certainly, every statement is certainly not a complaint or grievance, for example, at this time, material stated here as having been upheld, that's not a grievance or complaint.

MR. BURR: What item are you referring to sir.

MR. WALTON: Fourth paragraph on bottom of page 2.

MR. BLUE: That's neither a complaint or a grievance. And I'm sure that on the last page you will find some material that does not fall in this category.

MR. BURR: I notice items number 1 through 10, Mr. Blue, in Exhibit 7. Will you tell me whether or not all ten of the items so designated constituted grievances against Mr. Fabricious - or whether any of them so constituted?

MR. BLUE: Yes sir, they appear to be grievances that could be attributed to Mr. Fabricious or his actions.

MR. BURR: Would you say then that for the record that in your opinion all of the 10 items on exhibit 7 were meant to be a recitation of bona fide grievances of your group as of May 1959, against Mr. Fabricious individually, or against the Seward School system generally?

MR. BLUE: The open letter addressed to the board I believe that it states grievances, generally having to do with situations in the school system, I would say that most of

them generated from the policies or actions that Mr. Fabricious carreid out.

MR. BURR: I notice that the letter bears the date of, that exhibit 7 bears the date of May 18, 1959. Is that the correct date that this was prepared to your knowledge?

MR. BLUE: As far as I know it is.

[44] MR. BURR: Can you tell me when it was distributed or delivered to the Seward Public School Board - the public school board?

MR. BLUE: I might be one day off - this was prepared in the evening and was distributed the following morning, now whether the date was the date of the following day, the day of actual distribution, or actual day of preparation, I don't recall. I think proabbly it was the day of preparation.

MR. BURR: How was it delivered to the Seward School Board?

MR. BLUE: I believe Mr. Watts carried copies to the members.

MR. BURR: Did he hand carry them?

MR. BLUE: I believe so.

MR. BURR: And was he at the same time delivering copies of this document to members of the public at large in Seward?

MR. BLUE: To the extent that they were put in the mail.

MR. BURR: You did put copies in the mail to people in and about Seward.

MR. BLUE: Yes sir. They were for public distribution.

MR. BURR: At or about the same time that you delivered copies to the Seward Public School Board. So, if I understand your testimony correctly that you were distributing Exhibit 7 to the public at large in Seward before the Seward Public School Board even had a chance to meet and decide the validity of any or all of the grievances that you outlined.

MR. BLUE: No sir. We had attempted to get the information to the school board, it was rather fitting to get it in there, but had been unable to do so. For this way was the

final result of getting the information to the school board after attempts to communicate with them had fallen down.

MR. BURR: But in point of fact, written communication to the board, there was hardly time for the board to have taken action on this open letter as you call it, prior to the distribution of this document in and about the town of Seward.

MR. BLUE: That's right - you see this was contingent.

MR. BURR: Was "that's right," your answer?

MR. BLUE: I said that's right, yes.

MR. BURR: Thank you.

MR. BLUE: This action was contingent upon not being able to communicate with them before.

MR. BURR: So this being the first written compilation of grievances that you distributed to the school board on or about the 18th of May?

MR. BLUE: Not quite sir. Compilation - now perhaps compilation, there had been previous communication, there had been a number of attempts to communicate with the board.

[45] MR. BURR: Had there been previous written grievances as such?

MR. BLUE: I think in the nature of an invitation to discuss it grievances.

MR. BURR: Had there been previous written grievances as such communicated with the Board by your group?

MR. BLUE: I believe so.

MR. BURR: Do you have copies of such documents?

MR. WALTON: May I inquire if that includes letters, Mr. Burr?

MR. BURR: I'm talking about grievances, in the nature of grievances, anything in the nature of grievances.

MR. BLUE: You understand that it's difficult to remember just what correspondence was written a couple of years ago - I believe, I know that letters were written to the school board going out of this whole complex which was affected in that open letter.

MR. BURR: Is it your position Mr. Blue, that you or

your group made efforts to solicit the cooperation of the school board in the month of May or prior to the month of May, 1959, on grievances that your group had.

MR. BLUE: Yes sir. We tried to get with them in order to discuss the very things that are in that letter and were unable to do so.

MR. BURR: But you have made no effort such as exhibit 7 to bring these matters to their attention, have you?

MR. BLUE: Not in complete written form no, we supposed we would do it in conversation at a meeting.

MR. BURR: So this is your first effort, or was your first effort to reduce to writing the grievances that your group had and to serve a copy of these grievances on the school board.

MR. BLUE: Yes sir.

MR. BURR: And simultaneously therewith you saw fit to also distribute these grievances to the citizens of the City of Seward.

MR. BLUE: That was precisely the purpose of the open letter as you see it was addressed to school board and to the citizens of Seward.

MR. BURR: It is addressed to - would you tell me where?

MR. BLUE: An open letter to the Seward School Board - I'm sorry it doesn't appear on there, I was mistaken.

MR. BURR: But it was designed to also be a letter to the public at large in and about the City of Seward - and you meant for both bodies to receive this information simultaneously.

[46] MR. BLUE: Yes sir.

MR. BURR: So it was an effort to solicit the cooperation of the public at large in addition to the Seward Public School to hear your grievances.

MR. BLUE: Yes sir, we thought the public should be informed.

MR. BURR: Now, as a teacher of 14 years experience, would you tell me whether or not you are of the opinion there was anybody to whom the Seward Public Schools was responsible?

MR. BLUE: I believe the Seward Public School is responsible to - do you mean the School or the School Board?

MR. BURR: I'm talking of the Seward School Board.

MR. BLUE: Yes, I believe the Seward School Board is responsible to the electorate.

MR. BURR: Did you consider in the spring of 1959, the month of May, or prior thereto, that the school board, the Seward School Board was responsible to say the City Council of Seward.

MR. BLUE: There are certain connections, but not directly, no sir.

MR. BURR: Would you consider, or did you consider in May 1959 the Seward School Board to be responsible to the Superintendent of Education of the State of Alaska, or the Territory? If such was the case.

MR. BLUE: Not in certain defined limits, yes sir.

MR. BURR: As point of fact members of your group made applications to the Superintendent, the Director of Education, didn't they?

MR. BLUE: I know that one of these letters was mailed to them at the same time.

MR. BURR: At the same time? Had any previous efforts been made to solicit a ruling for an appeal to the Commissioner of Education prior to your soliciting the help of the public at large of Seward?

MR. BLUE: I don't recall sir.

MR. BURR: But you were the president of the American Federation of Teachers, Seward Local?

MR. BLUE: That is correct sir.

MR. BURR: In May 1959. But it's your testimony that you have no recollection of any efforts to appeal to the instrumentality of the body to whom the Seward Public School Board was responsible.

MR. BLUE: As I understand it, sir, the School Board is pretty largely autonomous.

MR. BURR: I don't want dissertation of law, Mr. Blue I want you to answer the question.

MR. WALTON: Give him an opportunity to, Mr. Burr.

MR. BURR: Is it your feeling and your position at this time Mr. Blue that each and every item of the ten items on Exhibit 7 are true in every respect?

MR. BLUE: To the extent that the people working on them conscientiously were able to state the truth, yes.

[47] MR. BURR: As president of, and a presiding member at the meeting that approved this document, exhibit 7, did you not have an opportunity to twice disapproval of these items if you had any question of their authenticity?

MR. BLUE: Yes sir, I did.

MR. BURR: Did you make any objections to anyone of them?

MR. BLUE: No, sir, I did not.

MR. BURR: And by that do you mean that you subscribe to the accuracy of each and every item on this document?

MR. BLUE: Yes sir, within limits of ordinary human frailty, yes.

MR. BURR: Are you stating by that or do you mean this board to understand by that that there is some question in your mind as to whether or not the ten items are wholly accurate?

MR. BLUE: There is no question in my mind about any of them.

MR. BURR: Do you believe them to be true?

MR. BLUE: I do sir.

MR. BURR: In every respect?

MR. BLUE: Yes sir, within the limits of human frailty.

MR. BURR: Within the limits of human frailty? Do you know a Charles Miller?

MR. BLUE: I believe I had been acquainted with him.

MR. BURR: Did you have the opportunity or did you by chance preside as a teacher in any class in which the daughter of Charles Miller was a student?

MR. BLUE: I do not know for sure sir, it's very possible.

MR. BURR: Do you know the daughter of Charles Miller?

MR. BLUE: I don't place her.

MR. WALTON: Mr. Burr, May I interject here - if you're going into matters referred to in Exhibit 5, I think you have already stipulated that these appellants shall have their right to testify in that subject matter at such time as deposition of the Millers are taken. I think it would be out of context to go into it now. I don't think it would be suffice.

MR. BURR: Do you know the daughter of Charles E. Miller?

MR. WALTON: Oh, I'm going to make an objection to any further interregation on this point. If Mr. Burr is not going to cooperate. Mr. Casey, we have already entered a stipulation that any of the matters referred to in Exhibit 5 will be gone into by the Millers if their attendance can be secured, and if their testimony can be solicited, and at that time the appellants will have an opportunity to testify regarding the same. I ask the Board now ask Mr. Burr [48] to abide by his previous stipulation and desist from any investigation on this line at this time. He'll have his opportunity when it is relevant. May I have a ruling?

MR. BURR: I would like to comment on that - you're not suggesting Mr. Walton that I am limited in my examination of Mr. Blue as to his activity as member of the Seward Public Schools in the year of 1959 or 1958.

MR. WALTON: I stated Mr. Burr, precisely what I am referring to the contents of the subject matter referred to in Exhibit 5.

MR. BURR: Well, I was referring in particular to any and all immoral acts, within the definition of the act, that we are concerned with here, that Mr. Blue did or was connected with at the time in question and I state that it is pertinent, relevant, and without any regards to any subsequent deposition that may be made.

MR. WALTON: You are referring to the alleged immoral acts, aren't you?

MR. BURR: He can deny anything that I ask him certainly he is at liberty to deny it, and I'm assuming he will.

MR. WALTON: I have made a motion and I ask Mr. Casey for a rule on it. May I also ask that any communication between Mr. Burr and the chairman be public and be recorded.

MR. CASEY: I sustain your motion, sustained.

MR. BURR: Your ahead.

MR. WALTON: Thank you, sir.

MR. BURR: Did you ever make any statements or speeches to the Seward Local of Longshoreman's ILWU?

MR. BLUE: Yes sir.

MR. BURR: Do you recall approximately when these statements were made?

MR. BLUE: I don't know if I remember the date sir, I suppose it must have been in the spring of 1960 - I don't remember.

MR. BURR: In the spring of 60 or 1959?

MR. BLUE: I don't remember. I guess -

MR. BURR: Do you recall whether or not the speeches or the statements you made were at or about the same time as Exhibit 7 was distributed in and about Seward?

MR. BLUE: I don't remember the sequence of it, but it would be generally within that area of time, yes.

MR. BURR: Do you recall what the occasion was that motivated the speeches that you made?

MR. BLUE: Yes sir.

MR. BURR: Will you tell us?

MR. BLUE: Certainly. The American Federation of Teachers were at that time circulating a recall petition to recall certain members of the Seward School Board.

MR. BURR: What was your function in appealing to the I.L.W.U.?

MR. BLUE: To get support in this action.

[49] MR. BURR: Support by way of signatures on this petition?

MR. BLUE: Perhaps passing a resolution or by way of the membership individually supporting it by signatures, or by votes.

MR. BURR: Did you ever make any statements before such a group or any group that you were out to get Mr. Fabricious and that he was the target of your efforts?

MR. BLUE: No sir.

MR. BURR: Did you ever make any similar statements to that?

MR. BLUE: Not that I recall sir.

MR. BURR: Did you make a statement before a group of union members of the International Longshoreman's and Warehouseman's Union in Seward to the effect that we have been unable to get rid of the superintendent and we are going to get rid of the Board?

MR. BLUE: No sir.

MR. BURR: Did you make a similar statement?

MR. BLUE: Not that I recall sir.

MR. BURR: Is it possible that you did and don't recall?

MR. BLUE: I don't think so.

MR. BURR: You don't think so - is there any question in your mind as to whether you did or didn't?

MR. BLUE: I'm certain I did not make that statement. Mr. Casey was there he perhaps can confirm that.

MR. BURR: We have no further questions.

MR. WALTON: May I please see that last exhibit - I don't know what number was assigned to it - Fourteen is it?

Mr. Blue, I believe you have testified that there were originally 18 members of the AFT?

MR. BLUE: Yes sir.

MR. WALTON: And that it was a group decision by virtue of a formal resolution to author and distribute Exhibit 7.

MR. BLUE: Yes sir.

MR. WALTON: The open letter.

MR. BLUE: Yes sir.

MR. WALTON: Do you know how many of those 18 original members are now teaching in the Seward Public School System?

[50] MR. BLUE: I believe that there are 4.

MR. WALTON: Do you know what those persons names are?

MR. BLUE: I believe I do sir.

MR. WALTON: What are they?

MR. BLUE: Mrs. Grace Campen, Mrs. Joanne Hoogland, Mrs. Marie Elbe, Mrs. Blanche Miller.

MR. WALTON: Do you know whether or not the persons were present at the meeting at which the group resolved to author and distribute the open letter.

MR. BLUE: I don't remember sir.

MR. WALTON: Do you know whether of not any of those four individuals had participation in the authorship of the letter?

MR. BLUE: Yes sir.

MR. WALTON: Please explain your answer.

MR. BLUE: Mrs. Hoogland participated in it. I don't know whether they were participating by vote or not, could be. Sometimes meetings were attended only by part-membership.

MR. WALTON: Do you know whether any of those four individuals were ever renounced memberships subsequently in the AFT.

MR. BLUE: Yes, sir, I know that.

MR. WALTON: What is the answer?

MR. BLUE: All but one of them has dropped membership.

MR. WALTON: They dropped membership? Which is the person that is still a member?

MR. BLUE: Mrs. Elbe.

MR. WALTON: When you say the other three persons dropped membership, how do you ascertian when a person dropped membership?

MR. BLUE: When they don't pay their dues or make a statement to the effect that they are not going to continue with the group. This was solicited.

MR. WALTON: What was solicited?

MR. BLUE: The discovery of their membership status.

MR. WALTON: By whom?

MR. BLUE: By me.

MR. WALTON: Do you know when the 1958-59 school year ended?

MR. BLUE: Early in May.

MR. WALTON: Do you remember the date?

[51] MR. BLUE: No sir.

MR. WALTON: Do you remember when graduation exercises were held?

MR. BLUE: I'm not sure of that.

MR. WALTON: Do you know whether or not school was still in session on May 18, 1959?

MR. BLUE: I'm sure it was not.

MR. WALTON: When you state that the AFT prior to May 18, had attempted to negotiate with the Seward School Board, to what are you referring?

MR. BLUE: We had written letters to them and tried to arrange meetings with them and since that had not come about, we were not successful.

MR. WALTON: Can you specify in detail what meetings did you try to arrange with the Seward School Board? on behalf of the AFT?

MR. BLUE: One of them that we arranged was the open hearing in which Mr. Ervine helped secure the contracts of the non-retained teachers.

MR. WALTON: That was on May 8, 1959, was it not?

MR. BLUE: I believe so.

MR. WALTON: Were you present at that meeting?

MR. BLUE: Yes sir.

MR. WALTON: Who else was present? Was that a public meeting or a private?

MR. BLUE: A public meeting.

MR. WALTON: Held between the School Board and representatives of AFT?

MR. BLUE: Yes sir.

MR. WALTON: And attended by the public at large?

MR. BLUE: Yes sir.

MR. WALTON: And who were the representatives of the AFT at that meeting?

MR. BLUE: Well, I was there and Attorney Pat Ervine was there as the spokesman for our group.

MR. WALTON: And what were the matters that came up for discussion and determination at that meeting?

MR. BLUE: That matter of non-retention, illegal non-retention of three teachers and question of educational leave, I believe.

MR. WALTON: Who appeared on behalf of the AFT?

MR. BLUE: Mr. Pat Ervine.

[52] MR. WALTON: And, anyone else?

MR. BLUE: He was the spokesman for the group. I suppose most of the membership were there.

MR. WALTON: And the illegally non-retained teachers names were what?

MR. BLUE: Mrs. Anna Svudlund, Mrs. Sue Hollenbeck, Mrs. Deborah Armstrong and there was one other who was not contesting.

MR. WALTON: Prior to that meeting of May 8, had you or anyone else on behalf of AFT communicated with the School Board by letter, to your recollection?

MR. BLUE: I believe we had, sir.

MR. WALTON: Do you recall who signed the letter in question?

MR. BLUE: Either I would have signed them or Mr., Mrs. Muir, Mr. Watts would have, they were the officers.

MR. WALTON: At the AFT-Seward School Board meeting on May 8, was there any objection made by any representative of the School Board that the matters then discussed had not been first processed through the superintendent?

MR. BLUE: I don't recall sir.

MR. WALTON: Has the Seward School Board ever contacted either you personally or your group objecting to contacting the Seward School Board without first going through the Superintendent before you got letters of non-retention?

MR. BLUE: Not to my recollection sir.

MR. WALTON: So that the first time you ever learned

that the Seward School Board objected to your having proceeded directly to the Board rather than to the superintendent was when you received your letter of non-retention in 1960.

MR. BLUE: I believe that's correct sir.

MR. WALTON: Following May 8, 1959, was there not a subsequent meeting held between the AFT and members or representatives of the Seward School Board?

MR. BLUE: Yes sir.

MR. WALTON: What date was that? May 16th, wasn't it?

MR. BLUE: I think it was that date sir.

MR. WALTON: Where was that meeting held?

MR. BLUE: I believe it was held in the basement of the Methodist Church.

MR. WALTON: And who represented the AFT at that meeting to your recollection?

MR. BLUE: The membership was there - a good portion of them, most of the membership was there.

[53] MR. WALTON: Was this meeting as a result of any communication with the Seward School Board?

MR. BLUE: Yes sir.

MR. WALTON: Whose communication?

MR. BLUE: Communication with Mr. Howell, the president.

MR. WALTON: Who made it? Who communicated?

MR. BLUE: I did sir.

MR. WALTON: What did you say to Mr. Howell preceeding this May 16th meeting?

MR. BLUE: I don't recall sir whether that was done by letter or by telephone, it may have been both, but it was with the intent that we get together and exchange ideas, find out whether our grievances were valid, what could be done about them and so forth.

MR. WALTON: When you are talking about the grievances, you are talking about the things that were set forth in Exhibit 7?

MR. BLUE: Yes sir.

MR. WALTON: Now, did Mr. Howell respond to that invitation?

MR. BLUE: Yes sir, he did.

MR. WALTON: What did he do?

MR. BLUE: He agreed that a meeting would be held and that the School Board would be present.

MR. WALTON: On May 16th?

MR. BLUE: Yes sir.

MR. WALTON: Did he say, no we cannot meet with you until you have first processed your grievances through Mr. Fabricious?

MR. BURR: Objection.

MR. WALTON: Are you going to make objections to leading questions, Mr. Burr? Very well, Did he make any objection at all to such a meeting?

MR. BLUE: No sir, except to the matter of arranging time.

MR. WALTON: Did the subject of processing complaints first through the Superintendent come up?

MR. BLUE: Not that I recall sir.

MR. WALTON: At the May 16th meeting, who else appeared on behalf of the Seward School Board.

MR. BLUE: Only one member of the School Board appeared which was Mr. Howell himself.

[54] MR. WALTON: What did he say, if anything, with respect to the other members of the Seward School Board?

MR. BLUE: I think that first he had said that they would attend and then he told them that they were not attending when he came but he was there.

* * *

[65] MR. BURR: At this time our next witness will be appellant Watts and I would like to make the request whether or not there is any portion of his testimony that we can stipulate, Mr. Walton?

MR. WALTON: We will stipulate the following matters which we believe Mr. Watts will testify: 1. That he was a

member and still is a member of the S.D.T.A. excuse me, he was a member of the S.D.T.A. at least prior to May, 1959, that he is a charter member and is still a member of the A.F.T.; that as a member of the A.F.T. he subscribed to and sanctioned AFT's determination [66] to author and distribute on open letter which copy is Exhibit 7; and that as a member of the AFT he authorized and sanctioned the preparation and distribution of the petition seeking recall of certain school board members; and that finally that he himself, as a member of the AFT did assist in the distribution of both the open letter and the petition for recall.

MR. BURR: That he did what?

MR. WALTON: He did assist in the distribution of both the open letter and the petition for recall. Incidentally, has that petition been introduced in evidence? Is there a copy of it?

MR. BURR: I believe not.

MR. WALTON: May I inquire Mr. Burr is this going to be one of the basis of the charges brought against Mr. Watts and Mr. Blue?

MR. BURR: It's one of the bills of particulars, I just overlooked offering it, I will offer it. I don't know if the Board will base its findings on the distribution of the bill in light of their recent stature in the election.

MR. WALTON: Those are the matters to which we can readily stipulate.

MR. BURR: Would you be willing to stipulate that Mr. Watts was during the spring of 1959 familiar with what we have offered as Exhibit 12 in these proceedings, which is the Seward School Board's Regulations.

MR. WALTON: You mean which is proported to be the School Board's Regulations. The answer is yes.

MR. BURR: And would he likewise be willing to stipulate that he is familiar with Section 7, which has been referred to in this Exhibit, on page 3.

MR. WALTON: Yes.

MR. BURR: And would he likewise be willing to stipulate that he was head of the grievance committee of the S.D.T.A. in the spring of 1959?

MR. WALTON: I cannot stipulate that he was the head of it, but he was a member of that group.

MR. BURR: Well, would he be willing to further stipulate that as a member of that committee he did solicit the cooperation of the two Framptons as previously testified to.

MR. WALTON: That is not correct. That's why we can't so stipulate.

MR. BURR: In this particular respect I should like to ask Mr. Walton a question again.

MR. WALTON: Very well.

MR. BURR: As for the other, I should like to offer a stipulation as to the other materials to avoid questioning on that grounds, so if it is agreeable I will be willing to enter into a stipulation with you that if were [67] called to testify that he would as to the matters suggested by both yourself and me be accepted as his testimony.

MR. WALTON: If you want me to stipulate that he would so testify to your questioning, I will so stipulate, I don't want to be precluded from calling him as a witness and enabling you to testify on the same matters.

MR. BURR: No, that's understandable.

MR. WALTON: So agreed.

MR. BURR: Do you swear the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God.

MR. WATTS: I do.

MR. BURR: Your full name.

MR. WATTS: James A. Watts.

MR. BURR: Your occupation?

MR. WATTS: School teacher.

MR. BURR: Are you presently employed?

MR. WATTS: I am not.

MR. BURR: Have you been employed since the year 1959.

MR. WATTS: Since the Spring of 1960, I have not been.

MR. BURR: Since when in 1960?

MR. WATTS: The latter part of May at the end of the school year.

MR. BURR: The latter part of May when the 1959-60 school year ended?

MR. WATT: Correct.

MR. BURR: Have you made any efforts to be employed since then?

MR. WATTS: Only in temporary capacity.

MR. BURR: Well, have you made any applications for employment as a school teacher elsewhere?

MR. WATTS: I have not.

MR. BURR: So you don't know whether or not you would be accepted in other areas for the purpose of teaching school, not having made application?

MR. WATTS: I do not know for sure.

MR. BURR: And you have made no effort to seek permanent employment elsewhere.

MR. WATTS: Only locally on a temporary basis.

[68] MR. BURR: My question was you have made no effort to secure permanent employment elsewhere?

MR. WATTS: That is correct.

MR. BURR: In the spring of 1959 Mr. Watts you were a member of the grievance committee of the S.D.T.A., were you not?

MR. WATTS: Yes.

MR. BURR: And were there other members on the grievance committee?

MR. WATTS: There were.

MR. BURR: What were their names?

MR. WATT: Mrs. Copeland, Mrs. Winninghoff, Mr. Zwick. Mrs. Copeland was chairman.

MR. BURR: But you were a member of this committee?

MR. WATTS: Yes.

MR. BURR: Can you tell me whether or not that committee was engaged in an effort to devise and carry out a plan of removing the superintendent of the Public Schools of Seward in the spring of 1959?

MR. WATTS: To my knowledge it was not.

MR. BURR: Was that within their planning, future planning under any circumstances?

MR. WATTS: No.

MR. BURR: Did it ever enter your discussions as a member of this committee?

MR. WATTS: To my knowledge, no.

MR. BURR: Did it ever enter into any conversation that you had with either of the two Framptons?

MR. WATTS: No.

MR. BURR: You heard their testimony under oath, did you not, Mr. Watts?

MR. WATTS: I did.

MR. BURR: Is it your position that both of these people are lying?

MR. WATTS: It is my position that they are mistaken - I did not say it. Their statement does not agree with mine.

MR. BURR: You will agree with me that their testimony was not equivocable in any respect concerning your testimony, would you not?

MR. WATTS: Would you mind stating that question again?

[69] MR. BURR: Would you not agree with me that their testimony after what you said was not equivocable, there was no doubt in their mind as to what they claimed you said. Would you agree with that position?

MR. WATTS: I cannot state because I do not know what was in their minds.

MR. BURR: You head what they said that you said on this occasion.

MR. WATTS: That is correct.

MR. BURR: Do you have any contention that what they are saying is not the truth?

MR. WATTS: Would you state that again?

MR. BURR: The question was you head what both of the Framptons had to say about what you said in the spring of 1959 in their opinion and based upon their recollection.

MR. WATTS: I head it, yes.

MR. BURR: Well, are you telling me that it is false in any particular?

MR. WATTS: According to me it is false.

MR. BURR: What part of their testimony is false?

MR. WATTS: The part referring to why I was there and what I said to them in relationship for the purpose of meeting with them.

MR. BURR: Would you be so kind as to correct their false testimony.

MR. WATTS: Is it alright if I start from the beginning again?

MR. BURR: You tell your story.

MR. WATTS: All right.

MR. BURR: Remember you're under oath, Mr. Watts.

MR. WATTS: Yes sir.

MR. BURR: You do believe in God, don't you?

MR. WATTS: I certainly do.

MR. BURR: All right, proceed.

MR. WATTS: I did not go to Mr. Frampton and Mrs. Frampton on behalf of the grievance committee of the Seward District Teacher's Association. I was there at the request and agreement of the Executive Committee of the Seward District Teacher's Association which had a meeting the previous evening, and executive meeting of 7 members, all 7 members of the Seward District Teacher's Association voted unanimously to continue efforts to try to get the contracts of the non-retained teachers and it was the request of the members of this 7 man executive committee that I speak to Mr. and Mrs. [70] Frampton on behalf getting their support in the voting that was to be held that night in the Seward District Teacher's Association meeting to further continue efforts to get these contracts for these teachers. As they stated, Mr. and Mrs. Frampton, in their testimony, I went because I know them well and I recognized the fact, and we all recognized the fact that a subordinate administrator is directly under the control of a superior administrator, also that there's a question before the school board at this time of whether husband and wife would be permitted to teach in the same building. Also at this time Mrs. Frampton was teaching under a temporary certificate which could be nullified at the next contract time if some-

one of higher qualifications made a press for her contract, if the administration and school board so desired. We felt that since they were in a difficult position, many of us that time did not know that Mr. Frampton had been a party to the causes, or the reasons for the dismissal and non-retention of some of these teachers under consideration. That is the reason why I was there. I said when I arrived substantially what Mr. and Mrs. Frampton said insofar as that we had been friends for many years, and that I was there on behlaf of getting their support and asking them support, if necessary. I reminded them that they were having the critical vote at the Seward District Teacher's Association meeting very much as I have previously outlined now and that we would like to have their support in this matter. Mrs. Frampton stated that she and her husband were in strong, in complete agreement with the administrator's policies and methods and could not go along with us. Mr. Frampton concurred with her. Then I also stated that I was sorry that they were taking that position, that things might become more difficult and I hoped that none of us were seriously injured or injured at all in this thing, and I appreciated their consideration and hoped that there could be harmony again soon. And then I left because it was almost time for 8:30 bell.

MR. BURR: It's your testimony Mr. Watts that no reference at any time during this conversation was made conconcerning the superintendent of public schools of Seward?

MR. WATTS: In what respect?

MR. BURR: In any respect.

MR. WALTON: Excuse me, Mr. Burr did you understand him to so testify?

MR. BURR: I'm asking the question, Mr. Walton, if he doesn't understand, I'll be glad to clarify it.

MR. WATTS: I cannot recall that his name was ever mentioned.

MR. BURR: Was the capacity of superintendent ever mentioned?

MR. WATTS: Not to my knowledge.

MR. BURR: Is it possible that you discussed this matter and don't remember it, Mr. Watts?

MR. WATTS: It is very unlikely that I wouldn't remember because that was a meeting of strong feeling.

MR. BURR: Is this a possibility, Mr. Watts?

[71] MR. WATTS: I cannot say.

MR. BURR: Well, do you prefer to say that it is not a possibility in which case the testimony of Mr. and Mrs. Frampton is false.

MR. WATTS: In my opinion the major part of their testimony is false.

MR. BURR: Perjury is a very strong accusation, Mr. Watts.

MR. WALTON: Now, here I will object. This is clearly an attempt to intimidate this witness. He doesn't have to be reminded, nor does it have to be suggested that he is accusing someone of perjury. It is not an accusation of curt perjury to say that someone else's testimony is false. There are more elements to it than that.

MR. BURR: Do you believe that Mr. and Mrs. Frampton would give false testimony under oath Mr. Watts?

MR. WATTS: I have always felt that they were both of high character.

MR. BURR: You haven't answered my question.

MR. WATTS: I do not know.

MR. BURR: You have no opinion in that regards?

MR. WATTS: I have thought about it a great deal.

MR. BURR: Well, did you arrive at any conclusions?

MR. WATTS: No I have not to this date.

MR. BURR: Do you have a reserved opinion as to whether or not they are lying?

MR. WATTS: I did not say that.

MR. BURR: Assuming that you had made such a request of the Framptons as indicated in their testimony, Mr. Watts, would it be your testimony at this time that that would have been one of your lawful functions as a member of the grievance committee of the Seward District Teacher's Association?

MR. WATTS: The Seward District Teacher's Association grievance committee was not functioning at that time.

MR. BURR: You mean you were not appearing as a member of the grievance committee when you testified that you talked to the Framptons?

MR. WATTS: I was not a member of the grievance committee at that time.

MR. BURR: What capacity did you have.

MR. WATTS: Executive council of the Seward District Teacher's Association.

MR. BURR: Well, would you consider it to have been one of your lawful functions to do what the Framptons claim that you did? [72] Assuming that what they say is true.

MR. WALTON: Excuse me this question I think is a little vague, could Mr. Burr perhaps please outline specifically what he

MR. BURR: If this witness doesn't understand the question, Mr. Walton, I'd be happy to rephrase it. I don't think he needs your assistance in telling him what he understands.

MR. WALTON: Now, Mr. Chairman, I don't want to engage in an argument with Mr. Burr, but it's my privilege to object if a question is in its form, not clear.

MR. BURR: It's most unorthodox for the counsel ıe for the opposing side to tell a witness when he doesn't understand a question and I think you will agree with me.

MR. WALTON: Now, Mr. Chairman, I did not tell the witness he did not understand. I objected to the form of the question as being unclear. I reiterate my objection.

MR. BURR: Do you have any questions about what I asked you?

MR. WATTS: I would like to have you ask that question again.

MR. BURR: Do you have that question?

RECORDER: Do you consider it would have been one of your lawful functions as an executive of S.D.T.A. to do what Mr. and Mrs. Frampton said.

MR. WALTON: I have made an objection. I would like

to have the chairman rule on my objection. I objected to the form of question on the grounds that it is unclear, it being not stated precisely what it is that reference is made to.

MR. BURR: Do you understand the question Mr. Watts?

MR. WALTON: May we please have a ruling, Mr. Burr.

MR. BURR: Mr. Watts do you understand the question?

MR. WATTS: Yes I understand the question.

MR. CASEY: Overruled.

MR. BURR: Will you answer the question.

MR. WATTS: Under these conditions and under these circumstances at that time I would consider it unethical.

MR. BURR: You consider - again this is an assumption that what they are saying you did and said would be true, then it's your opinion that what they said is true, it would be unethical for you to have said that. Would you tell me why in your opinion it would have been unethical for you to take such a position?

MR. WATTS: At the time and conditions of the situations brought this meeting about the conditions and situations between the large part of the faculty and the administration had not deteriorated to the point where stronger action would have been warranted or necessary, in my opinion.

[73] MR. BURR: And by stronger action you mean some affirmative effort on the part of the teachers themselves to remove the superintendent?

MR. WATTS: Not necessarily.

MR. BURR: Do you believe that it's within the scope of responsibilities and duties of a school teacher or a body of schools teachers to take matters into their own hands without exhausting the remedies provided by law to remove the supreme administrator, namely the superintendent, if in their judgment this course of action is required?

MR. WATTS: In a hypothetical situation, I believe that all employees have the right in ultimate situations to go to the constituted legal employers and ask for redress of grievances to whatever extent they feel is necessary to remedy a severe situation.

MR. BURR: Well, do you believe that regulations are made to be abided by?

MR. WATTS: To a large measure I believe that regulations are meant to be followed and used and to be abided by whenever it's possible to do so.

MR. BURR: I take it then that there are situations in your judgment when it may not be indicated that following regulations to the letter is proper?

MR. WATTS: Sometimes it is impossible to follow regulations because doors are closed to you.

MR. BURR: You have indicated previously by your stipulation that you are familiar with Exhibit 12 which purports, as Mr. Walton says, to be the School Board's Regulations?

MR. WATTS: Yes.

MR. BURR: And you were familiar with these regulations at the time in question, in the spring of 1959?

MR. WATTS: In a general way, yes.

MR. BURR: Would you not concede that it was your business as a teacher to be somewhat more than familiar in a general way with these regulations?

MR. WALTON: Now, I will have to object to this question. This question as stated presumes that in fact regulation were adopted. I think the Board will concede that this hasn't yet been proved.

CHAIRMAN: Mr. Burr will you please rephrase the question?

MR. WALTON: Until it is shown to me that these were actually adopted by the Board as regulations it was no duty upon anyone to pay any attention to them.

MR. BURR: Thank you for your observation on point of law, Mr. Walton. Request ruling.

MR. CASEY: As I recognize these were the regulations of the School Board, I will have overrule your objection. Proceed.

MR. BURR: Getting back to my question, Mr. Watts, would you not concede that the regulations, or the purported regulations, of the Seward School Board, Exhibit

12, in view of the fact that you have indicated a knowledge of these purported regulations in the spring of 1959, would you not concede that as a teacher [74] you had a duty to be more than just generally familiar with these regulations?

MR. WATTS: The question comes up of what we mean with generally familiar with the regulations.

MR. BURR: Would you not consider it fair to state that a teacher in any school system is bound by all applicable rules and regulations of that system?

MR. WATTS: Not if conditions are such that they cannot function. No set of rules can foresee all difficulties that might arise.

MR. BURR: But will you not concede that insofar as the regulations appear to be unequitable that a school has an obligation to abide by the regulations and the procedures as outlined in the regulations?

MR. WATTS: They should make very serious efforts to follow the regulations as outlined by the properly constituted authorities.

MR. BURR: Is there some question in your mind, Mr. Watts, that Exhibit 12, is what is purports to be.

MR. WATTS: There is doubt in my mind.

MR. BURR: Then you considered in the spring of 1959 that what is designated as Seward School Board regulations was not in fact binding upon you.

MR. WATTS: It was binding on me to the extent that I believe in observance of laws and regulations to the best of my ability.

MR. BURR: Let's go back. You indicated a knowledge of what purports to be the School Board Regulations at the time in question, spring of 1959. You know of the existence of what purports to be the Seward School Board Regulations.

MR. WATTS: Yes.

MR. BURR: Then you are taking the position at this point that you knew of them and believed them not to be binding on you as a member of this system?

MR. WATTS: Not absolutely binding.

MR. BURR: Well, in what respect were they not binding - that's what I'm trying to get at.

MR. WATTS: To the extent - they were not binding to the extent that in cases were the regulations could not facilitate the solution of a problem that you have to then sometimes bypass or use some other method as near the regulations as you can.

MR. BURR: Then what you are saying, is in effect is that you recognized these regulations insofar as they would answer your questions, and if there came a question the regulations could not answer, then you would not consider these regulations binding upon you as a teacher?

MR. WATTS: I would feel that I would have to use the framework of the regulations to try to attain the objectives that we were trying to attain.

[75] MR. BURR: Then if at that time regulations did not achieve that objective it would be your contention that you could take the law in your own hands and find a solution as you apparently did. Is that your position?

MR. WATTS: Would you restate your question?

MR. BURR: If in the regulations you couldn't find a satisfactory solution to your problem, it would be your feeling, and it was your feeling in the spring of 1959, that you were lawfully entitled to go outside these regulations and find your solution as best you could.

MR. WATTS: To the extent that if I could not find a solution in the regulations to my objectives I would try to go, if possible, someway to reach the superior authority that I was responsible to, which was the elected School Board in this case.

MR. BURR: But you will concede that insofar as the regulations provided a remedy that you would be duty bound as a teacher to follow that remedy.

MR. WATTS: Every person that has to follow a set of regulations has to interpret those regulations as best they understand them.

MR. BURR: Mr. Watts, I don't want a dissertation on my questions. I want an answer then you may explain them.

MR. WATTS: All right, state your question again.

MR. BURR: Insofar as these regulations provide a procedure would you not concede that it was your responsibility to follow that prescribed procedure until you had exhausted that procedure and found it to be unsatisfactory. Yes or no, than you may qualify it you want to?

I take it by your reluctance to answer there's some doubt in your mind as to what your duties were?

MR. WALTON: I will object to that assertation of criticism. Perhaps we should let Mr. Watts state whether or not he's reluctant to answer before Mr. Burr volunteers it for him.

MR. WATTS: I am reluctant to answer that question.

MR. BURR: You refuse to answer it?

MR. WATTS: No, I said I am reluctant.

MR. BURR: Please, don't be reluctant, and please answer it, it's a most important question.

MR. WATTS: It is to me also.

MR. BURR: Take your time then.

MR. WALTON: May I request that the answer be read back, I've forgotten it.

MR. BURR: The answer or the question?

MR. WALTON: Question. I think it was a long one.

[76] MR. BURR: Well, let me rephrase it then.

RECORDER: Insofar as these regulations would you not concede that it was your responsibility follow these regulations as far as you could to find the best solution - then there were some more words of Mr. Burr's that I didn't catch.

MR. WATTS: My answer to that question is yes.

MR. BURR: My next question to you is did you in fact follow the regulations and exhaust the remedies provided for therein in the spring of 1959 before planning and distributing the exhibit which is identified as exhibit 7, an open to the school board and the public?

MR. WATTS: I feel that I had, we and I, had exhausted all possible means of solving our problems - that is the only reason for bringing out this letter.

MR. BURR: Did you as an individual or as a representa-

tive of the Teacher's group, address your complaints to the superintendent individually before compiling Exhibit 7 and distributing Exhibit 7 to the public?

MR. WATTS: Our group, the Seward, the American Federation of Teachers, had tried to meet the school board and had failed to complete a meeting with them.

MR. BURR: Had you in fact addressed and communicated a complaint as to each of the ten items on Exhibit 7 to the superintendent of schools, Mr. Fabricious individually, prior to distribution of exhibit 7 to the public in Seward.

MR. WATTS: To my knowledge, no.

MR. BURR: I should like to direct your attention to paragraph 9 on page 4 of the Seward School Board Regulations, or what purports to be, and ask you whether or not that doesn't require a communication of complaints to the superintendent before any further action is taken. Take your time and read it.

MR. WATTS: May I read this aloud?

MR. BURR: I prefer you read it to yourself and then tell us whether you understand it or not.

MR. WATTS: I understand it.

MR. BURR: Well, for the record I should like to read the first part of it, I'll read the whole thing in fairness to you. Paragraph 9 - "Employees or groups of employees desiring to address the board shall address their communication to the superintendent and not to the individual members of the board, except that copies of the communication may be sent to board members." How did you address a communication to the Superintendent distinghished from the public at large and the school board of Seward?

MR. WATTS: We addressed the open letter to the School Board, with copies to the public.

MR. BURR: Well, you'd concede that you didn't follow the regulations which says that you should address them to the superintendent and not to the individual members of the board and it certainly doesn't mention distributing them to the public does it? Paragraph 9 - do you

see anything in here that says you distribute them to the public before you give them to the School Board. If you do, please tell me where it is?

[77] MR. WATTS: There's nothing here that says it can't be distributed to the public.

MR. BURR: Well, the fact it doesn't appear would license it in your opinion.

MR. WATTS: In this case yes.

MR. BURR: Thank you. In fact, if the law says you can't kill a man with an axe, you can kill him with a rifle legally, is that what you mean?

MR. WALTON: I object. Mr. Chairman will you please rule on the propriety and applicability of this question?

MR. BURR: I'm trying to get to the bottom of this man's mind as I don't understand it. I want him to explain this to me.

MR. WALTON: Well, I don't understand Mr. Burr's logic, Mr. Chairman.

MR. BURR: Let me - I'll rephrase it - it's not important. Let me just make sure I understand you. The fact that it doesn't say you *can't* carry these complaints to the public at large was your justification, Mr. Watts in believing that you could. Is that correct?

MR. WATTS: If you'll let me finish the statement afterwards.

MR. BURR: You may yes, just answer my question then you can explain it. Does that fairly state your position?

MR. WATTS: My position is

MR. BURR: No just say yes or no it doesn't - then explain it.

MR. WATTS: I will have to ask for the question again.

MR. BURR: Does the fact that paragraph 9 of the regulations on page 4, the fact that that says that you cannot, or the fact that it doesn't make any reference to distributing complaints to the public at large is your justification for believing that it was permissable.

MR. WATTS: I believe it was permissable.

MR. BURR: And you base that upon the fact that

there's no mention made in the regulations as to whether or not this is proper. In the face of an admonition that it be presented first to the superintendent.

MR. WATTS: I would like to make my explanation for my reason.

MR. BURR: I guess you better - go ahead.

MR. WATTS: First, I was one of eighteen members of the American Federation of Teachers, acting only as one of thier agents, in complete agreement with their voted decision to publish this open letter. The reason it was decided and voted to publish this open letter was because our efforts to reach the school board to solve our problems about what was happening to us during the year failed. They had not not with us even after school was was out in the spring after it was agreed they would meet with us. Our members were falling, would be falling rapidly within the next week - some would be going away [78] to work, some would be going away to school and we felt we had to reach the board someway and it was our conviction, specifically my conviction that when all avenues are closed to you meeting with public officials that the ultimate authority lies with the electorate, and in using this means to reach the school board and the electorate on our problem.

MR. BURR: Are you through?

MR. WATTS: At this time.

MR. BURR: Well, in your distributing exhibit 7 to the public what did you hope to attain?

MR. WATTS: We would like to have gotten a meeting with the School Board.

MR. BURR: The letter bears the address an open letter to the Seward School Board, Seward, Alaska - Gentlemen. Now was this letter designed to be a communication to the Seward School Board and nobody else?

MR. WATTS: To the Seward School Board and the electorate of the community of Seward.

MR. BURR: Did you not consider the Seward School Board to be autonomous from the public insofar as their elected duties were being properly performed.

MR. WATTS: I do not believe any elected group is autonomous if they cannot and will not consider problems which are properly theirs for consideration.

MR. BURR: You haven't answered my question. Will you not concede in that in our system of government, including school government, that an elected body is autonomous from the electorate insofar as they do only what the law allows and requires them to do. Other words, do their duties, and insofar as they do their duties, they are autonomous from the electorate. Would you concede that?

MR. WATTS: With this reservation. That when the elected members do not do the will of the people a group or the people have the right to have those elected members brought up for consideration to see whether they are expressing the will of the people.

MR. BURR: But Exhibit 7 is the only evidence that I have in my possession that you have made any such communication to the Seward School Board. Do you have other efforts in writing?

MR. WATTS: Yes.

MR. BURR: Addressed to the Seward School Board?

MR. WATTS: Yes.

MR. BURR: Were they processed through the Superintendent of Public Schools?

MR. WATTS: I believe they were processed simultaneously to all members of the board and the superintendent.

[79] MR. BURR: Once again you went outside the regulations which prescribes to go through the superintendent on prior cases besides the one I'm talking about. Yes or no?

MR. WATTS: State your question again?

MR. BURR: So there were other occasions besides the incident we are talking about here wherein you went outside the regulations insofar as you didn't go directly to the superintendent first.

MR. WATTS: Yes there were several previous approaches.

MR. BURR: Did you feel at the time you sent exhibit 7 to the School Board that there was a chance that this letter would desire, would accomplish the desired result as itemized in number 1 through 10, items 1 through 10.

MR. WATTS: Item 7?

MR. BURR: Exhibit 7 as your open letter which was delivered to the public at large.

MR. WATTS: Now will you state your question?

MR. BURR: Did you feel at the time you prepared and caused that document to be distributed that it would accomplish the desired result in correcting items 1 through 10? Did you author that, Mr. Watts?

MR. WATTS: I did not.

MR. BURR: Did you help write it?

MR. WATTS: Only as I was a member of the organizaton that approved of everything.

MR. BURR: Did you read it before you delivered it to anybody?

MR. WATTS: I certainly did.

MR. BURR: Well, are you familiar with all of the items on it now?

MR. WATTS: I haven't memorized them but I understand them in general.

MR. BURR: You had read them prior to the mailing, haven't you?

MR. WATTS: Yes.

MR. BURR: Well did you feel that by delivering that document to the School Board that there was a chance that you would correct all of the situations outlined in that document?

MR. WATTS: We hoped that we could correct most of them.

MR. BURR: Well did you believe at that time in the spring of 1959 when you delivered that there was a chance of accomplishing correcting what you considered to be deficiencies.

MR. WATTS: Yes.

[80] MR. BURR: You believe that this School Board

not only had the power but they had the duty and responsibility to correct these deficiencies?

MR. WATTS: To the extent that they felt was reasonable and fair, whatever corrections they made.

MR. BURR: So then you were actually petitioning, in effect you were petitioning the School Board to take some action - you had some grievances and you wanted some action taken.

MR. WATTS: We were trying to get them to meet with us to talk over these problems in detail - we had to specify them.

MR. BURR: You were trying to get a meeting with the Seward School Board?

MR. WATTS: Correct.

MR. BURR: Well will you tell me where in Exhibit 7 you ask the Seward School Board to have a meeting to discuss these grievances if that was the intent of the document?

MR. WATTS: The bottom of page 2.

MR. BURR: What does it say?

MR. WATTS: Therefore we request an immediate special open school board meeting Tuesday night, May the 19th for the purpose of presenting to the board and the public particulars of administration in the Seward Public Schools, with announcement of the meeting by the board on station KIBH, at this time the local shall demand immediate guarantee, substantial improvement, of and administration, administrator's policies included and we list

MR. BURR: What was the date of the meeting that you wanted to have

MR. WATTS: The 19th.

MR. BURR: What's the date of the letter?

MR. WATTS: May the 18th.

MR. BURR: And so the fact that you requested a meeting is an indication in your mind that the Seward School Board at that point had the duty and the responsibility of hearing and entertaining and deciding grievances that you outlined here.

MR. WATTS: We did.

MR. BURR: Is there any reason in that event to make a public spectacle of this item by distributing it to the members of the public at large and if so, what was the purpose thereof?

MR. WATTS: Do you want me to give my reason or the group's reason? I think they are the same.

MR. BURR: Well, if they're the same you needn't differentiate.

[81] MR. WATTS: All right. We felt that the Seward School Board had failed us when they had refused to meet with us on Saturday night the 16th of May after having set up a meeting and even called the president of the Board as late as noon on Saturday asking if it would be agreeable if Mr. Frampton an interested party were to attend that meeting. We agreed to it, we did not know that they were not meeting with us until 8:00 o'clock that night when the president of the Board, Mr. Howell, came before us and reported that they were not meeting with us. We were more than shocked at that time to think they would not meet with us and we were wanting to meet in good faith.

MR. BURR: Was that when you told them to come down to the Methodist Church?

MR. WATTS: I did not negotiate.

MR. BURR: This is the same occasion, isn't it?

MR. WATTS: It's the same occasion.

MR. BURR: And they were unreasonable in not coming down to the Methodist Church.

MR. WATTS: It was suggested that probably neutral grounds would be the best place.

MR. BURR: And that was neutral?

MR. WATTS: It was neutral. It was a rented

MR. BURR: And the school was not neutral?

MR. WATTS: The School Board meeting room was the administration's headquarters.

MR. BURR: Now about the room we're in now - in the public High School. Is that not neutral? Would you consider your cause in this case to be prejudiced by virtue of the fact that you are sitting in the public school?

MR. WATTS: Not at all.

MR. BURR: Well, would you have considered your cause to have been prejudiced to have the School Board meet here in the spring of 1959?

MR. WATTS: To my knowledge the School Board had never met here before and at that time we did not even consider it.

MR. WALTON: Mr. Chairman may I interject a comment, may I object to this line of questioning. This isn't the issue before the board. This meeting is to just last ad infinitum unless we observe some sort of self-imposed restrictions. So I raise an objection to this line of questioning.

MR. CASEY: Mr. Walton, we have been instructed as you know by the State Board to get a full and correct record as possible and I don't know any other means of getting it than trying to get all the facts and I will have to overrule your objection.

MR. BURR: Mr. Watts, you have indicated knowledge of Exhibit 7 which is the open letter to the Seward School Board which has item 1 through 10. Now are you saying at this time that items 1 through 10 were true in every respect at the time you distributed this letter to the public?

[82] MR. WATTS: To the best of my knowledge, I believe every one of them were true at that time.

MR. BURR: Had you thoroughly and exhaustively investigated yourself, or your group, to satisfy yourself beyond any reasonable doubt that each of these items were true?

MR. WATTS: I have investigated many of them and others I had complete confidence in the statements from many sources on the others.

MR. BURR: Item No. 1 "Illegal non-retention of three teachers reflecting the professional reputation of those involved in violation of Section 138 of the laws." Now had there been a lawsuit to determine the illegality of what the school board had done regarding the three non-retention as of the time that you distributed Exhibit 7 to the public.

MR. WATTS: The law was on the statues and to my knowledge had never been contested at that time.

MR. BURR: The question was had there been any legal determination of the legality or illegality of the board's action on item No. 1 of exhibit 7 as of the time you distributed this document to the public?

MR. WATTS: There had been several legal opinions.

MR. BURR: Had there been any legal action. Had a court of competent jurisdiction determined the school board to have been wrong as a matter of law at the time you distributed this letter to the public to your knowledge?

MR. WATTS: The Board itself had expressed an opinion when the grievance committee went to meet with them.

MR. BURR: Mr. Watts, please don't get off on a tangent. Answer my question. To your knowledge had a court of competent jurisdiction determined the Board's action to have been wrong as a matter of law at the time that you distributed Exhibit 7 to the public?

MR. WATTS: I had no knowledge of any court action on it.

MR. BURR: And in spite of that you had the audacity to advise the public of Seward the illegal non-retention of public school teachers was an irregualarity on the part of the School Board?

MR. WALTON: I take exception to the representation that this was

MR. BURR: I ask you to read Item No. 1 and if it doesn't say illegal non-retention, then I'm in error.

MR. WATTS: I don't like the word audacity.

MR. BURR: Well, you can make a suitable substitution.

MR. WATTS: I felt that I was completely justified.

MR. BURR: Did you want the public of Seward to believe that you stood above the courts of Alaska in believing what the Seward School Baord did was illegal before the court ever ruled on it or did you want the public to [83] believe that you were qualified to make a decision on the legality of what they did as a matter of law, as your purported to do in Paragraph No. 1 of that exhibit?

MR. WATTS: This open letter was published after the May 8th School Board meeting in which the local School Board voted to return the contracts for next year to the non-retained teachers at the insistence of the American Federation of Teachers and legal counsel who presented their case here in this room. The fact that the School Board returned the contracts to these teachers was sufficient for me.

MR. BURR: That was sufficient for you to advise the public that what they had done was an illegal act?

MR. WATTS: Yes.

MR. BURR: And you wanted the public to believe that the School Board had done such an illegal distinguished from irregular perhaps in non-compliance with the school tenure law?

MR. WATTS: I'm not an authority on legal terminology.

MR. BURR: Well, I'm happy to have that concession at this late date. But were you of the same opinion when you advised the public that the Seward School Board had done an illegal act by non-retaining, or attempting to non-retain those teachers? Was that what you wanted the public at large to believe, Mr. Watts?

MR. WATTS: It was a matter of opinion. Many people of the public already believed that.

MR. BURR: Then in effect, Mr. Watts, it was the design of you and your group to go actually beyond the Seward School Board in your open letter which appears on Exhibit 7. Was it not?

MR. WATTS: I have not said that.

MR. BURR: Well, are you willing to concede that by virtue of the fact that you distributed this document not only through the mails, but beat doors and hand carried it to the citizens of Seward?

MR. WALTON: Objection. Mr. Burr and Mr. Chairman, some of these questions are really unfair.

MR. WATTS: I haven't heard Mr. Watts complain yet.

MR. WALTON: No, that's why he has an attorney to take care of him if the opposing counsel doesn't guard his rights. One of his rights is that he should not be harassed

by the attorney, that he shall not be stated "you went around beating doors" when there is no such evidence. It is also his right that counsel should not charge him with being audacious, with being presumptuous and stating opinions to the public as to illegality. If Mr. Burr's attempt here is to mock this witness then he is going beyond his duty as an attorney.

MR. BURR: This witness is the one who requested the public hearing, I didn't. I would have been more than happy to have this in private, Mr. Walton. Don't put the burden on me.

[84] MR. WALTON: We want a public hearing we want.

MR. BURR: Well, don't complain about it.

MR. WALTON: I will complain about mockery and sarcasm.

MR. BURR: What was the question again?

RECORDER: Reread the question.

MR. WALTON: We appreciate the fact that the secretary has omitted the very words to which I objected to - beat on doors -

MR. BURR: Well, I'll strike that part of the question if that will satisfy you.

MR. WATTS: I would be happy to answer that question.

MR. BURR: Well, your counsel has objected I think we should have a ruling, unless you want to overrule your counsel.

MR. WALTON: I think Mr. Burr has withdrawn the question.

MR. BURR: A portion of it.

Let me rephrase the question if that would make any difference. Are you willing to concede Mr. Watts that Exhibit 7 was designed to be an appeal not only to the School Board but an appeal to the public at large of Seward?

MR. WATTS: The public electorate.

MR. BURR: The public at large.

MR. WATTS: It was an attempt to appraise the public at large sent to the School Board that we had a situation that we would like to have remedied.

MR. BURR: Isn't it true that this document was broadcast or a substance of it was made a subject of broadcast at or about the time that this was distributed?

MR. WATTS: By radio? To my knowledge, no.

MR. BURR: But it was distributed through the mails to many people in the Seward area.

MR. WATTS: A copy yes.

MR. BURR: Simultaneously with distribution of it to the Seward School Board.

MR. WATTS: An hour or two later.

MR. BURR: So it was roughly simultaneous with your advice to the School Board. Other words distribution of this to the public about the Seward area was roughly simultaneously with the distribution of it to the Seward School Board.

MR. WATTS: The same morning.

MR. BURR: Would it not be fair that this letter was designed to be an appeal not only to the Seward School Board but to the electorate and to the people at large in Seward?

[85] MR. WATTS: Yes.

MR. BURR: In affect you were trying to impeach the Seward School Board by methods not contemplated by the statutes in the state of Alaska?

MR. WATTS: We were not trying impeach the school board.

MR. BURR: Did you not thereafter make an attempt to remove some of the members of the school board by the process which was followed by a petition for a recall election.

MR. WATTS: After several other efforts were made to reach the school board with our problems and all else had failed.

MR. BURR: Did you make any attempts to appeal to the Superintendent of Education of the State of Alaska on your grievances?

MR. WATTS: I was not secretary at that time but I'm quite sure that this letter, a copy of this letter was sent to the Commissioner of Education's office.

MR. BURR: A copy of Exhibit 7?

MR. WATTS: Yes.

MR. BURR: But you had made no previous attempt to your knowledge to carry your grievances above the Seward School Board to either the City Council or to the Commissioner of Education?

MR. WATTS: To my knowledge, my specific knowledge, I do not know of any other.

MR. BURR: I have no other questions.

MR. WALTON: I believe, according to your testimony, Mr. Watts you stated that you are a member of the grievance committee composed of yourself, Copeland, Winninghoff and Swick. Can you tell us where the persons Copeland and Winninghoff now may be?

MR. WATTS: Specifically.

MR. WALTON: Yes, do you know? Let's put it are they in Seward?

MR. WATTS: Yes I believe so.

MR. WALTON: Are they still teaching in the public school system?

MR. WATTS: Yes.

MR. WALTON: And they, as yourself were appointed to this committee by the president of the S.D.T.A., Mr. Richardson?

MR. WATTS: Yes.

MR. WALTON: And do you recall when that committee was appointed?

MR. WATTS: The committee was appointed on March 23, 1959.

[86] MR. WALTON: Was this committee created as a result of any S.D.T.A. meeting?

MR. WATTS: This committee by its name was provided for in the constitution and bylaws of the Seward District Teacher's Association as a standing committee and it had not been appointed up to that time for that year.

MR. WALTON: My question was this: Did this appointment of the committee follow any S.D.T.A. general meeting?

MR. WATTS: The appointment was not made in a meeting.

MR. WALTON: Was it caused as a result of any action taken at a meeting?

MR. WATTS: No.

MR. WALTON: There was an S.D.T.A. meeting was there not, on March 23, 1959?

MR. WATTS: No, I believe not - there was one a few days before that.

MR. WALTON: I see, and could you - Mr. Burr has required what the purpose of this grievance committee was. I don't think you've had a full opportunity to state exactly what its purpose was.

MR. WATTS: On March 23rd, two members of the faculty who had been given non-retention notices appealed to the president in writing, president of the Seward District Teacher's Association, for the Association to use their officers to petition or negotiate with the Board for their contracts. Because of this Mr. Richardson the president appointed this committee to do the negotiating with the Board.

MR. WALTON: And the two teachers in question contracts had been terminated were Svedland and Hollanbeck?

MR. WATTS: Correct.

MR. WALTON: And - incidentally Mr. Richardson has already testified. Did he at that time appear sympathetic to the purpose of the committee as you have stated it?

MR. WATTS: As far as I know he was in complete accord with it.

MR. WALTON: Did he tell you or your committee to first talk with Mr. Fabricious before proceeding to contact the Board?

MR. WATTS: To my knowledge he did not.

MR. WALTON: Did he in fact advise the committee to contact the board directly?

MR. WATTS: He appointed us individually and left us to meet to decide our course of action.

MR. WALTON: And did he understand that you were to contact the Board directly?

MR. WATTS: That, I do not know.

MR. WALTON: And, the purpose of this committee was to investigate non-retention of teachers Hollenbeck and Svedlund and not to depose Mr. Fabricious as superintendent?

[87] MR. WATTS: That is correct.

MR. WALTON: Now, let's return to the conversation with the Framptons. I believe Mr. and Mrs. Frampton have testified that you state in words to the following effect help us get rid of the superintendent. Did you say anthing such as that?

MR. WATTS: I did not.

MR. WALTON: You have testified today that the conversation took place on April 28, 1959, did it not?

MR. WATTS: Yes.

MR. WALTON: And you have testified that there was scheduled that night a meeting of the S.D.T.A.?

MR. WATTS: Correct.

MR. WALTON: And can you tell the Board what the purpose of the April 28th, 1959 S.D.T.A. meeting was?

MR. WATTS: How far back do you want me to go?

MR. WALTON: First say what the purpose of that meeting was and then if you wish to give background, do so.

MR. WATTS: The purpose of the meeting that night, it was a regular meeting, regular April meeting of the Association. There were two things, election of officers for the next year and the question of whether the Seward District Teacher's Ass'n. would continue efforts to obtain the contracts of the illegally non-retained teachers. The reason why it was so critical at this point was because going back to the time when the committee was appointed, the 23rd of March, a letter was written by this committee on the 23rd, copied that night and mailed on the 24th, as the 25th of March was the deadline for making appeals.

MR. WALTON: To whom was this letter written?

MR. WATTS: It was written to the School Board with copies to Mr. Fabricious, I do not remember whether Mr. Frampton, the principal received one or not.

MR. WALTON: What did that letter contain?

MR. WATTS: The letter quoted the law stating that there seemed to be an apparent illegality and asking the board their thinking on this matter. We mailed that letter that noon. In a few days we received a reply from the Board offering to meet with us I believe it was the following Monday night, which would be I believe the 30th of March and we met in the school board room at that time, a committee of four. And at that time we received no satisfaction from the Board.

MR. WALTON: As to this March 30th - could it be March 31st?

MR. WATTS: It could have been the 31st.

MR. WALTON: As to the meeting I take it that that was the meeting held between the Board and the S.D.T.A. committee?

[88] MR. WATTS: Correct.

MR. WALTON: And at the express invitation or acceptance by the Board?

MR. WATTS: The Board, I believe made the invitation to us as a result of our letter to them.

MR. WALTON: I see. Do you have a copy of your letter to them requesting such a meeting?

MR. WATTS: I do not believe we have one.

MR. WALTON: You suspect that the original would be in the records of the School Board file?

MR. WATTS: I would rather think so.

MR. WALTON: Incidentally in their reply to you sir, did the Board instruct the S.D.T.A. or its executive committee to first proceed through Mr. Fabricious before contacting the Board?

MR. WATTS: To my knowledge they did not. I have not seen that letter for months.

MR. WALTON: And who represented the S.D.T.A. at that meeting?

MR. WATTS: Mrs. Copeland, Mrs. Winninghoff, Mr. Swick and myself. The School Board, Mr. Fabricious and Mr. Frampton were also present.

MR. WALTON: I see. And what transpired at that meeting?

MR. WATTS: We discussed the non-retention of the teachers who had made their appeal for their contracts, the School Board stated that they did not want these teachers and they were not willing to return their contracts.

MR. WALTON: Do you recall anything in particular which any of the board members or Mr. Fabricious said on that occasion?

MR. WATTS: Yes - I remember that Mrs. Whitmore said words to this affect, that it the School Board was forced to give these contracts to those teachers that it would be very easy to fire them at a later date. It was very simple to overstaff then in the fall dismiss the extra teachers which would be the teachers they wanted to fire. At that time Mr. Fabricious stated, said Yes it's very easy to dismiss any undesirable teacher we have on our staff and all we have to do is to check if a teacher is a minute late in the mornings, fails to get a report in exactly on time or is out of the room without permission, it constitutes substantial non-compliance with the regulations.

MR. WALTON: When Mrs. Whitmore so spoke, did she appear to have the concurrence of the other Board members present?

MR. WATTS: I heard no disagreement.

MR. WALTON: Who were the Board members present on this occasion?

MR. WATTS: Mr. Howell was president, Mr. McCrea, Mr. Casey, Mr. Jeffreys and Mrs. Whitmore.

MR. WALTON: Was there anything else of any significance spoken by Mr. Fabricious or the Board Members on that occasion with respect to the teachers who had been non-retained. If not please state.

[89] MR. WATTS: I believe that's sufficient.

MR. WALTON: I take it then that the conclusion of that meeting was that the Board was not prepared to restate the four teachers in question?

MR. WATTS: State your question again please?

MR. WALTON: Was a conclusion reached by the Board at that meeting of the Board and the S.D.T.A. Committee that the teachers in question would not be reinstated?

MR. WATTS: I don't remember the exact words, but the meeting ended with the conclusion that the School Board would not change their stand on the matter of the non-retention.

MR. WALTON: And it was therefore for this reason that Mr. Richardson appointed a committee?

MR. WATTS: We were the committee - he had appointed us a week or so before.

MR. WALTON: I see yes, you were the executive committee.

MR. WATTS: That's right.

MR. WALTON: I see.

MR. WATTS: We returned our decision to the executive committee of the Seward District Teacher's Association and our special committee did not function anymore.

MR. WALTON: I see and then the next meeting of the S.D.T.A. was on April 28th. Is that correct?

MR. WATTS: Yes, but we had several executive sessions before that of the Executive Council.

MR. WALTON: Did anything transpire at those executive sessions which you feel this Board should know?

MR. WATTS: Yes.

MR. WALTON: Tell us what they were.

MR. WATTS: At the first meeting all 7 members were unanimously agreed that we should continue efforts to get the contracts returned. We wrote a letter to the National Headquarters of the N.E.A. stating our position and quoting the law and asking what was their opinion on this matter. Some time went by before we had a reply. Upon receiving that reply we had another executive meeting and in that letter the National headquarters office, our parent organization of the National Education Association said that we were clearly in the right as far as they were concerned and the law and to press for these contracts. At that meeting we wrote another letter to the School Board quoting the pertinent parts of the letter from the N.E.A. letter, asking for those contracts by the end of the week, I believe it was the 24th of April - the letter I believe was written on the 20th.

[90] MR. WALTON: At this time Mr. Watts I will hand you document, Appellants Exhibit 1, and would you please identify it?

MR. WATTS: Yes.

MR. WALTON: Would you please identify it?

MR. WATTS: This is the letter in answer from the President of the School Board to Mrs. Copeland, chairman of our Grievance Committee.

MR. WALTON: Setting up the March

MR. WATTS: March 30 or 31st.

MR. WALTON: Setting up the March 31st, 1959 as your meeting date. Night?

MR. WATTS: Yes.

MR. WALTON: Now, please identify Appellants Exhibit 2 which I hand you.

MR. WATTS: This is a letter written by the president of the Seward District Teacher's Association addressed to Mr. Fabricious, Superintendent of Schools stating it was written by Mr. Monte Richardson, signed by all of the Executive Committee of the Teacher's Association, asking for the contracts of the non-retained teachers, also quoting parts of the letter from the National NEA Headquarters stating their position in the efforts to get these contracts.

MR. WALTON: And the purpose of the April 28, 1959 meeting of the S.D.T.A. was rectify, I take it, or to seek progress which had been withheld or denied at the March 30 or March 31st meeting?

MR. WATTS: The School Board did not send a reply to this letter just mentioned from Mr. Richardson to Mr. Fabricious so after the deadline date of the 24th, we brought, it was brought up, this question of non-retention was brought up before the general assembly of the Seward District Teacher's Association in their regular meeting in April.

MR. WALTON: On April 28th, 1959?

MR. WATTS: Correct.

MR. WALTON: And it was your purpose in speaking with the Framptons to seek their approval at that meeting?

MR. WATTS: And their support in the voting we knew would take place.

MR. WALTON: And the voting precisely on what?

MR. WATTS: The question - the voting on the question of whether we would continue efforts to get these contracts back for these teachers who had appealed to us, to get their contracts for them.

MR. WALTON: And reference to words continue efforts to get their contracts, what did you refer to?

[91] MR. WATTS: I was referring to the efforts that the Grievance Committee had made with the School Board and the letter and the meeting with them and also the letter that the Seward District Teacher's Association had sent to the Superintendent asking for the contract.

MR. WALTON: Do you recall when you spoke to the Framptons whether or not you indicated to them that the meeting at which their attendance was requested was the S.D.T.A. meeting?

MR. WATTS: Yes. We all knew that it was a Seward District Teacher's Association meeting because that's the only Teacher's Association in existence at that time.

MR. WALTON: Are you sure that the Framptons understood that it was a Teacher's Association meeting that you were referring to?

MR. WATTS: I'm quite sure they understood that.

MR. WALTON: Would there have been any reason at that time for you to say such words as they have reputed to you, such as "we are going to get the Superintendent" or words to that affect.

MR. WATTS: There would have been absolutely no reason to because all we were concerned about at this time was getting the teacher's contracts.

MR. WALTON: You state that at that time that your committee did not realize that Mr. Frampton had been a party to the very things which the S.D.T.A. was objecting to. What were you referring to?

MR. WATTS: Who it was who asked that these teachers not be retained. Whether it was the principal, the superintendent or the members of the Board?

MR. WALTON: Did you subsequently ascertain that Mr. Frampton had anything to do with the non-retention of any of those teachers?

MR. WATTS: I think it has come out in what you might call evidence in hearings, or probably in statements made by various executives of the school, by what was said and what was done. I do believe that none of us any have known Mr. Frampton might have, that his opinion about the non-retention of the teachers might have been considered, but to what extent, we weren't aware of at the time.

MR. WALTON: Mr. Frampton was principal of the grade school, was he not?

MR. WATTS: Yes.

MR. WALTON: And did you subsequent to the conversation with him learn that he was instrumental in the non-retention of any of those teachers to whom we referred?

MR. WATTS: Yes.

MR. WALTON: Precisely whom?

[92] MR. WATTS: Mrs. Hollenbeck and I believe Mrs. Armstrong who was not making an effort to get her contract because she had already secured another position in the meantime.

MR. WALTON: Mr. Burr interrogated you on this point, but I would like to get this cleared up. Do you think that the Frampton's deliberately rendered false testimony at this meeting held last night or do you have any alternative explanation of their testimony.

MR. WATTS: That is a difficult thing for a person to answer because it's hard to understand another' person's mind but at our hearing last spring here, when the same question came up, I believe the record will show that Mr. Frampton and specifically Mrs. Frampton stated that they knew what I meant, that they were not quite sure of the exact words but that they knew what I meant.

MR. WALTON: If in fact, Exhibit 12 was never adopted by the Board as Regulations of the School District, would you deem yourself bound by them?

MR. WATTS: I would consider it a guide that I should try to follow.

MR. WALTON: Has anyone ever indicated to you on what occasions if any, Exhibit 12 was ever adopted by the Board as its regulations?

MR. WATTS: I have never heard or ever seen any evidence that it was adopted by the Board.

MR. WALTON: And such a request has been made now?

MR. WATTS: It has been - it has been made here repeatedly, at the last spring hearing, the same request was asked several times for the State Board of Education's Hearing Committee and the evidence was never forthcoming.

MR. WALTON: In the course of your responses to Mr. Burr's question concerning your conduct in meeting with the Board or authoring or distributing the open letter or the petition for recall, was your conduct your own private conduct or was it any way representative of any group?

MR. WATTS: In all of these actions or acts that I participated in I was acting in my capacity as a member of a group and of a group only.

MR. WALTON: At the S.D.T.A. meeting on April 28, 1959 did the group vote on the question of whether or not they should pursue to attempt to regain for the teachers in question their contracts?

MR. WATTS: The motion was made in a negative way. The motion was made to not to continue efforts to get these contracts. The vote was a vote of 11 to 12 in favor of not continuing efforts to get these contracts.

MR. WALTON: As a result of that vote what occurred if anything?

MR. WATTS: As a result of that vote the nominee candidate, or the nominating committee for the president of the next year's Seward District Teacher's Association withdrew his name from candidacy and a new president was elected from the floor. A new slate of officers were elected and I was again elected as a representative of the Executive Council. The meeting adjourned and that was the last meeting of the Seward District Teachers Association had that year.

[93] MR. WALTON: Was another Teachers Association thereafter formed?

MR. WATTS: Within 3 or 4 days, it would be the first part of May, efforts were started to affiliate with the American Federation of Teachers and at that time 18 members of the original 29 members of the Seward District Teacher's Association joined the American Federation of Teachers.

MR. WALTON: Can you please tell the Board what is the American Federation of Teachers?

MR. WATTS: The American Federation of Teachers is a federation of class room teachers and class room teachers only, affiliated with the American Federation of Labor and the CIO. Their purposes and constitution is almost identical with the National Education Associations of which the Seward District Teachers Association is an Affiliate. The American Federation of Teachers has the same goals and the same objectives but to some extent a slightly different method. The Seward District Teacher's Association and all branches of the National Education Association used their method for furthering teacher's benefits and teachers advancement, their primary method over the year has been lobbying and publication, trying to educate the public through pressure groups which are legitimate, getting legislation enacted for their benefit. The American Federation of Teachers uses the same method and also tries to get legal decisions in the State supreme courts and the United States Supreme courts whenever possible to set precedent for advancement of teachers condition.

MR. WALTON: Is the AFT a recognized respectable organization?

MR. BURR: Oh man, I object to that form of question.

MR. WALTON: Very well, withdrawn.

MR. WALTON: Who are some of the other members of the AFT whom the Board might be acquainted with. by name?

MR. WATTS: John Dewey is the father of modern public school education, has been a member while he was living for years in the American Federation of Teachers. He is an outspoken booster of them and we have his published statement in support of them as part of our literature.

MR. WALTON: Anyone else?

MR. WATTS: We have several professors who have been head of the departments of education at the Columbia University and many of the other great universities also head of it. We also have currently several members of Congress who are still at the present time members of the American Federation of Teachers. Notably,

MR. BURR: I'm going to object to this dissertation on the American Federation of Teachers. I think it's immaterial, irrelevant and wholly outside the scope of review and responsibility of this Board. I will ask that the president so instruct the witness.

MR. WALTON: Now, may I be heard on that please? I request that this witness be entitled to give the names of two prominent political figures who are [94] closely affiliated with the organization. I'm sure the Board wants all the facts.

MR. BURR: Facts, yes.

CHAIRMAN: Go ahead.

MR. WALTON: Proceed sir.

MR. WATTS: All right. Senator Douglas is a member, has been a teacher in his younger years and still an active member of the American Federation of Teachers. Mike Mansfield of Montana is a very active supporter and still at present a member of the American Federation of Teachers. That's all that come to my mind right now.

MR. WALTON: Very well. You have stated in response to Mr. Burr's question that assuming Exhibit 12 does constitute regulations of the Board, nevertheless a teacher would not be bound to follow them if they were inapplicable. Do I correctly state you sir?

MR. WATTS: That is correct.

MR. WALTON: In the Fall of, pardon me, in the spring of 1959 was paragraph 7 and paragraph 9 on pages 3 and 4 in your opinion applicable in the AFT's attempt to secure the non-retained teacher's contracts?

MR. WATTS: Can you restate your question?

MR. WALTON: In the spring, I believe you testified

that in 1959, the spring, the AFT attempted to negotiate with the Board in efforts to secure contracts for several teachers who had been terminated. Your answer sir?

MR. WATTS: We had yes.

MR. WALTON: And I ask you now, at that time did you feel, or do you now feel that paragraph 7 and 9 on pages 3 and 4 were applicable as far as the AFT's attempt to do what was concerned.

MR. WATTS: You stated two question there. You said did you feel and do you now feel. I do not. I feel that these were not, could not apply to us at that time.

MR. WALTON: Why?

MR. WATTS: Because the administrator had become a block to any efforts to reach the School Board and solve our problems, or to listen to our problems themselves with any degree of a chance of a solution to our problems.

MR. WALTON: Will you tell us exactly what you mean by that?

MR. WATTS: I can go back to the first school board, the first teacher's meeting in the Fall of 1958, the first meeting that Mr. Fabricious addressed the school when he arrived here, two months after he took over in July. I had just returned from a trip which I had been on leave for a year and the day I arrived home I found a new superintendent and the next day we had our first teachers meeting the day, either the [95] day school started or the day before and at that meeting Mr. Fabricious introduced himself to us and in the statements he made I felt some concern and so did several other teachers. He stated I am a strong forceful man and I expect to be boss. Teachers will not be permitted to talk to School Board members.

MR. WALTON: Can you think of any other instances when Mr. Fabricious had attempted to block the efforts of teachers to contact the board?

MR. WATTS: Well, I had no specific difficulty or knowledge of anything until another meeting held in January, about 4 months or 4½ months after school had started. Mr. Fabricious called a Grade School Faculty meeting.

MR. WALTON: What year, what month?

MR. WATTS: It was in January of 1959 of the Grade School Faculty and on that day I think there were about 18 or 19 teachers present and 17 of them belonged to the Seward District Teachers Association. Whe he came in he had a letter I believe it was from the Seward School Board, evidently evidence of authority for speaking to these teachers about a particular problem. And then after these introductory remarks, he made this statement, you the teachers association have started a scandal campaign to try to get rid of me. You are trying to force the School Board to buy back my contract but I have a three year contract and I expect to be here long after the most of the rest of you have gone. In the spring when contracts are let I'll remember who my enemies are. And then he paused a moment and continued - it is unethical and unprofessional for two or more teachers

MR. BURR: I want to object at this time if you reciting a letter I should think that if you had it exhibit

MR. WALTON: No, this is a public address, the witness is just, this is a speech by Mr. Fabricious before a Grade School Faculty meeting in January of 1959.

MR. WATTS: I will start with the second phrase, after a short pause after his first one he stated - it is unethical and unprofessional for two or more teachers to talk together in the halls and it will not be permitted. If you wish to discuss this matter further I will be downstairs by the fountain and he walked out.

MR. WALTON: Was there any other indications of futility in any attempts to contact Mr. Fabricious directly on behalf of teachers problems?

MR. WATTS: My problem such as it was started probably in I would say in February or March - it was not a specific problem to begin with - it was a question of whether my travel abroad would be counted as educational travel. Now at this time I had recently had my state certificate teaching in any high school had been renewed for 5 more years which takes it up to 1963. Now the State Law

states that this law was written in 1954 I believe, which states that teachers to continue the validity of their certificates they shall gain I believe it's 6 hours [96] of credit every six years, or maybe it's 5 hours of credit, I don't remember that law on that, 5 or 6 hours of credit in every 6 years to continue the validity of their certificate. The law also stated and the law of 1957 stated that if a teacher had a valid certificate in existence in 1957 that the state would renew that certificate one term the length of the certificate and mine was a 5 year certificate. Mine was renewed in 1958 when I came back from my trip so that was all clear and legal. This question has been quite a problem, led to lots of discussion, to me it wasn't that important. The question came up whether I could get any credit, educational, credit for educational travel. Now at this time before I left and it was when Mr. Carlson was superintendent, we discussed the problem, there was nothing official about it.

MR. WALTON: Let me. Did you ever have occasion to talk to Mr. Fabricious about this problem?

MR. WATTS: Yes.

MR. WALTON: When and where?

MR. WATTS: The first time I believe it was mentioned was in Mr. Frampton's office in the Grade School, an informal discussion. He was afraid that since, in February I believe, he brought out a notice, a proper notice from the School Board that there were going to be some additional requirements, probably 6 hours credit if you hadn't gotten 6 hours credit since 1954 and I felt that since I had had no earlier notice and I was greatly in debt because of my trip and the State Board did not have any regulations pertaining to education travel at that time, that I should have some time to make up this work. I had thought in terms of writing a paper or doing some correspondence. A month or so later another requirement came out saying that 4 of those 6 hours would have to be in resident study, which would mean * * * have to * * * that I would have to go to some school and resident to 4 of those 6 hours of credit.

I talked it over with Mr. Fabricious I believe on 2 or 3 occasions. Then on April 3rd I went to his office to discuss it further with him.

MR. WALTON: Now, specifically what was it that you requested from Mr. Fabricious?

MR. WATTS: I was interested in having a years extension of time.

MR. WALTON: To fulfill these extra credits requirements?

MR. WATTS: To fulfill the extra credit requirements or to be able to write a paper for some university.

MR. WALTON: What happened on this April 3rd meeting?

MR. WATTS: On the April 3rd meeting when we were discussing this Mr. Fabricious said if he was thinking of the fact that I was quite a bit in debt for the purpose of my trip, he said that if he made a hardship case exception in my case, he would probably have to do it for other people the same thing. And I stated I felt that if they had legitimate reasons they should be given an extension of time casue it was rather short notice - 2 or 3 months before school was out to make plans for an extensive summer school course and he made this statement to me, he said "I have gotten rid of a third of the teachers this year and I [97] expect and I'll have to get rid of half of the teachers next year. There's too much deadwood in this system." That was the end of our discussion. I thought it over for about a week and then I went to him and asked if I could have a hearing before the School Board concerning a year's extension of time and he said yes, it was my legal right, but that he and the School Board had already made up their minds about me, so as a result of that I went to 11 people and asked them to come to my hearing whenever the date would be set for it. And the date was set May the 8th, 1959.

MR. WALTON: And at that meeting what determination was made, if any, of that request?

MR. WATTS: At this meeting on May the 8th, which was an open meeting held in this room at 8 o'clock on Friday night, since the Seward District Teacher's Association had dropped the non-retention appeal and also inactive for the rest of the year, the new Teacher's Union, on behalf of all of these teachers who wanted an extension of time, felt we needed an extension of time for summer school, were to present our case for an extension of time and also we took up the case of the non-retained teachers who wanted their contracts.

MR. WALTON: And what happened with respect to the request for extension?

MR. WATTS: All right. We had an attorney here and at this open meeting the Seward School Board voted to return the contracts to these teachers in question and also to give all of us a years extension of time to get our credits.

MR. WALTON: Let me go back to this April 28th meeting with the Framptons. Did you have occasion immediately thereafter to speak with Mr. Fabricious?

MR. WATTS: The very next morning, the morning after the vote in the Teacher's Association in which the non-retention cases were dropped by the Seward District Teacher's Association, Mr. Frampton called me from my class, I had a class seeing some visual film, called to his office and Mr. Fabricious was there and in the presence of Mr. Frampton he told me that he had heard that I was out trying to solicit support to get him fired, and that was an unethical, unprofessional, unethical, unprofessional and despicable thing to do and he was going to fight me in every way he could and he was going to get me in every way he could.

MR. WALTON: Do you remember what his words were - can you quote his words to the best of your recollection?

MR. WATTS: I remember that one statement in which he said I am going to fight you in any way I can and I am going to get you in any way I can. Then I asked him, still thinking at this time that he was talking about my efforts to get people to come to my hearing but I thought he was

referring to that, I asked him I said I did not know that I was a trouble maker, and he said no you do not have a reputation of being a trouble maker. Then I asked him about the fact that my education travel was of any value to me and he said yes, it was probably a big value to me as a teacher. I asked him if my certificate which was good for four more years was sufficient and he said it satisfies the State requirements but it does not satisfy the local school board requirements. That was the end of our discussion.

[98] MR. WALTON: Much point has been made of the opinion of the S.D.T.A. and the AFT that the non-retention of teachers Hollenbeck, Svedlund, Brown and Armstrong had been illegal. Was that opinion derived on the basis of any professional guidance.

MR. WATTS: When the Seward District Teachers Association was still functioning the legal counsel of the National Education Association advised us that these teachers had been according to law illegally non-retained and to make all efforts to get these contracts.

MR. WALTON: It is in reference to that opinion which is found in Appellants Exhibits here, is it not?

MR. WATTS: Yes.

MR. WALTON: And incidentally did the Board ever concur in that opinion, impliedly or expressly thereafter? I'll withdraw the question. What action did the Board ultimately make with respect to the non-retained teachers contracts?

MR. WATTS: On May the 8th they voted to return the contracts to these teachers in question who wanted their contract because they were illegally non-retained.

MR. WALTON: Now this May the 8th meeting was held as a result of what persons, and what associations were represented at the May 8th meeting.

MR. WATTS: The 18 members of the American Federation of Teachers presented their case at this meeting.

MR. WALTON: Were they represented by anyone in particular?

MR. WATTS: Yes they had legal counsel, Pat Ervine from Anchorage.

MR. WALTON: And were they represented by any particular designated spokesman?

MR. WATTS: I spoke briefly on the matter of the year's extension of time and I believe there were a few comments from various people in the audience who were concerned.

MR. WALTON: And did the Board on that occasion recognize you as representative of the AFT and Mr. Ervine attorney for AFT?

MR. WATTS: As far as I know they did because there was no protest made at this time, there seemed to be harmony on that point.

MR. WALTON: The Board didn't object that this matter should first be processed through the Superintendent?

MR. WATTS: No protest was made that I know of.

MR. WALTON: And thereafter I mean subsequent to May 8th, did the AFT attempt to arrange a meeting with the Board. I believe you testified they attempted to arrange a May 16th meeting. Did they not?

MR. WATTS: Yes.

[99] MR. WALTON: And that failed?

MR. WATTS: Yes.

MR. WALTON: And was any subsequent meeting held at which the Board and the AFT were represented?

MR. WATTS: After our efforts in the open letter to the School Board of May 18th was published, in that letter we asked for a meeting on the 19th, either the 19th or 20th, and we received a letter in reply from the Board saying they could set up a meeting maybe I believe it was the 26th of May, would be the next week. And,

MR. WALTON: Incidentally, in that letter did they ask you to meet with the Superintendent on the 26th or did they ask you to meet with the Board?

MR. WATTS: Meet with the Board.

MR. WALTON: And, did you meet with the Board on the 26th?

MR. WATTS: We did not meet with the Board on the 26th. We met with them on the 28th.

MR. WALTON: Mr. Burr, – just a minute –

MR. BURR: I would request both documents be admitted.

MR. WALTON: Would you please tell the Board what Appellants Exhibit 3 is?

MR. WATTS: Appellants Exhibit No. 3 is a letter from the Seward Public Schools signed by Mr. Tom Howell, written to Mr. Walter Blue, president of the American Federation of Teachers, in which

MR. BURR: We have no objection - you can offer this exhibit.

MR. WALTON: I'd like to have it in the record.

MR. BURR: It is in the record as an exhibit if it's introduced.

MR. WALTON: I'd like to have this gentleman tell us briefly what it is.

MR. BURR: I object to his reciting a letter that he didn't even sign.

MR. WALTON: I'm not asking him to recite it - I'm only asking him to identify it, and I think it's imperative for the State Department should they

MR. BURR: It'll be an exhibit in evidence - I'm only trying to abbreviate the proceedings.

MR. WALTON: It would have been identified by now if you hadn't objected. I'm merely asking the witness to identify it.

MR. WATTS: It is a letter, as I have so stated, written to Mr. Blue, president of the American Federation of Teachers from the president of the Seward School Board, discussing the

[100] MR. BURR: No, No, there you have accomplished your end - If you want to go through and read all these exhibits in the record I'll be happy to do it, Mr. Walton - all of them - I have no objections perhaps it would be better.

MR. WALTON: Mr. Burr, I don't think you're testifying.

MR. BURR: I'm requesting

MR. WALTON: You wish to make a formal request -

you're certainly entitled to do so. After a discussion between counsel - Mr. Walton resumed questioning and will you please identify Appellants Exhibit No. 4?

MR. WATTS: This is a letter dated May the 20th to Mr. Tom Howell, president of the Seward School Board from Mr. Walter B. Blue.

MR. BURR: No objections.

MR. CASEY: We will recess until 1:15 PM for lunch.

MR. CASEY: This is now the reconvened meeting - proceed.

MR. WALTON: I believe Mr. Watts that you last testified that the Board had indicated it willingness to meet with the AFT on May 26th - did you so testify?

MR. WATTS: Yes.

MR. WALTON: And I believe my next question was, was a meeting held pursuant to that time?

MR. WATTS: On, or before May the 26th, negotiations were resumed for another meeting and this meeting was finally set up for the 28th and all parties would be available for that meeting.

MR. WALTON: And was a meeting held on May 28th, 1959?

MR. WATTS: A meeting was held at that date in the Seward School Board chambers.

MR. WALTON: Who was present?

MR. WATTS: The School Board and Mr. Fabricious and myself.

MR. WALTON: And did you appear in any represented capacity?

MR. WATTS: I appeared at that time as secretary of the American Federation of Teachers and as their representative to petition for consideration of our problems that had been bothering us for so long.

MR. WALTON: I understand - the purpose of the May 28th meeting was to explore the matters set forth in the open letter of Exhibit 7?

MR. WATTS: That's right and all of our problems generally, specifically them.

MR. WALTON: Was your representated capacity acknowledged by the Board on that occasion?

[101] MR. WATTS: At the beginning I believe Mr. Casey questioned us being there as a union member or the union, or the teacher's union, and also whether I was secretary of the teacher's union, but Mr. Howell because of previous correspondence and talks, negotiations with the American Federation of Teachers, was able to verify that as far as he knew I was the secretary.

MR. WALTON: And what transpired in the course of this meeting? - with respect to the matters contained in the open letter?

MR. WATTS: All right - I was given the floor as soon as I was recognized and I asked that better relations be established between the administration and the faculty. Also, that all of these questions be considered on the ten points of the open letter to the School Board - that Mr. Swick's situation and that Mr. Jerry Smith's situation about their positions being declared vacant, or their particular assignment being declared vacant or abolished, that they be given reconsideration on their problems. Also, that in the future, freshmen teachers, or all teachers needing help should get help from the administration and from principals and supervisors to help them along the first year. The other questions or statements that I asked for consideration was that any teacher in the future who was being considered for non-retention be given notice someway or another early in the year so that person could make other plans and resign for the next year instead of having to wait until they get notice of non-retention with no previous information or knowledge that they are going to get it.

MR. WALTON: What response did you receive from the Board on those matters?

MR. WATTS: I was told, I do not know who stated it, that they were interested in harmony between the School Board, the administration and the faculty and they would certainly see to it that any teacher who was being in the future who was being considered for non-retention would be given adequate notice ahead of time.

MR. WALTON: Did anything further transpire with respect to the matters set forth in the open letter?

MR. WATTS: There was a great deal of discussion about the, particularly myself to start with, that they had investigated my past and that they had found that my record was very clean and that I was not known as a trouble maker and that they were very surprised to know that I had fallen under the influence of a bad teacher and had been corrupted. I said that I did not know of any teachers on the faculty who were trouble makers and they said it was a new teacher.

MR. WALTON: Generally, was the meeting satisfactory as far as the AFT was concerned, or not?

MR. WATTS: The Meeting was a failure as far as we were concerned because after almost two hours of tape recording of this meeting at the very end when it was quite obvious that we were not going to make any headway, just about the time the tape ran out, Mr. McRae said to me, he said, Jimmy you and all the rest of your trouble makers ought to resign and get out so we can organize a good school. Then, someone noticed that the tape recorder evidentally had run out of tape and there was a little discussion over that and I was waiting to be dismissed and Mr. Fabricious stated Watts you and all the rest of your union members ought to have your throats cut.

[102] MR. WALTON: Was there any further conversation between you and Mr. Fabricious on that occasion?

MR. WATTS: No, I was dismissed right after that.

MR. WALTON: And then you left?

MR. WATTS: I left.

MR. WALTON: And, what was the next event that occurred in this program of unpleasantries?

MR. WATTS: I reported back to the Executive committee of the American Federation of Teachers and on the next day, the 29th of May, we started recall action against the School Board.

MR. WALTON: Specifically, you say, we, we is who?

MR. WATTS: We is the American Federation of Teachers.

MR. WALTON: And how did you start recall action?

MR. WATTS: We started a petition with a spokesman speaking to two branches of the Longshore Union

MR. WALTON: Now, do you know whether or not a formal decision to circulate a recall petition was ever entered into by the AFT as a group?

MR. WATTS: Oh yes.

MR. WALTON: Do you recall when this decision was made?

MR. WATTS: After our unsuccessful effort to meet with the Board the week that the open letter to the School Board came out on May 18th, we did not meet that week, on Saturday the 23rd an effort was made to reach one or two members of the School Board to see if they could talk with us and they declined to do so. On Sunday, the 24th, the American Federation of Teachers met and voted to make one more effort to have a meeting with the School Board and if that failed to initiate, then we would initiate recall action.

MR. WALTON: It was pursuant to that decision that recall action was initiated?

MR. WATTS: Yes.

MR. WALTON: Do you know when the school year ended in 1959?

MR. WATTS: It ended the 15th of May, 1959.

MR. WALTON: Do you recall the day it started?

MR. WATTS: It was the first day after Labor Day in September, 1958, the first Tuesday, I think it must have been the 6th or 8th of Sept. 1959, when school started.

MR. WALTON: You mean 1958, don't you?

MR. WATTS: Pardon me, 1958, yes. It would have been the second. This is the year [103] it started the first week -

MR. WALTON: Then can you state for the record briefly what was the history of the action seeking recall of the Board Members?

MR. WATTS: The sequence of events that led to the recall of the effort of the School Board members started - did

not start as a recall effort at all - it started strictly as an effort to get the teacher's contracts by the Seward District Teacher's Association.

MR. WALTON: Well, now, with respect to this petition for recall which I believe is in evidence, do you know what persons circulated it? Can you identify some of the people who circulated it?

MR. WATTS: Yes, I can.

MR. WALTON: Please do.

MR. WATTS: I may in error, but I believe Mr. Ralph Rider, I believe Mrs. Donna Kownlaki, I do not recall whether

MR. WALTON: Let me ask you whether these persons circulated it? Mr. Earl Trevethan, if you know?

MR. WATTS: Yes.

MR. WALTON: Miss or Mrs. Vida Drown?

MR. WATTS: Yes.

MR. WALTON: Miss or Mrs. Betty Reed?

MR. WATTS: Yes.

MR. WALTON: Mr. James MacSwain?

MR. WATTS: Yes.

MR. WALTON: Mr. M. A. Wright?

MR. WATTS: Yes.

MR. WALTON: Were all these persons teachers?

MR. WATTS: No.

MR. WALTON: Which ones were?

MR. WATTS: None of those mentioned.

MR. WALTON: Do you know how many signatures were obtained on that petition, approximately?

MR. WATTS: On all pages of the petition, approximately 300. There were about 260 submitted.

[104] MR. WALTON: And, after the petition was lodged with the City Council, then what happened briefly with respect to the history of the recall action?

MR. WATTS: After this petition was considered sufficient in numbers to us, we submitted it to the City Clerk for certification, and at that time, they had 10 days in which to check it over, and during that time, the four members

of the School Board, who were under recall effort, issued a 1 page statement to many or most of the signers of this petition, requesting them to take their names off the recall petition.

MR. WALTON: I wish to mark another Appellants Exhibit - would it be number 5? Thank you. Would you please identify Appellants Exhibit No. 5 and state whether or not this is the document to which you were referring last?

MR. WATTS: Yes, this is the document to which I referred.

MR. WALTON: Do you know whether or not any persons who received a copy of that letter thereafter withdrew from the petition their signature?

MR. WATTS: I do know that there were 18 signatures removed either as a result of this document or the notice on the regular news broadcast on the radio for a day or two slightly later than this date here.

MR. WALTON: What was the broadcast notice about?

MR. WATTS: It came from the office of the Acting City Manager to the radio station for regular news broadcast of Seward city news in which the notice stated that anyone who wanted to take their name or remove their name from the recall petition might do so by writing a letter to the City Clerk inasmuch as the recall petitions at that time were unavailable, they were in the hands of the City Attorney in Anchorage.

MR. WALTON: May I ask you to briefly state what the history of the recall action was?

MR. WATTS: After a reasonable time, the petition was certified and checked by attorney, presented at a Council meeting in June, the latter part of June, to the for the City Council to take action on the election or whatever other action they deemed proper. At that time the City Attorney, Mr. Buckal, was present, and two attorneys representing the School Board or School Board members.

MR. WALTON: Now, Mr. Watts. let me ask you I don't

want you to go into such great details, but state in 4 or 5 sentences, what happened to the recall action to date.

MR. WATTS: All right. The School, the City Council accepted the petition, but did not order a date set for the on August the 27th and at that time the decision was agency of Mr. Blue, its president, appealed I believe that's the term, to file, I don't know what the term would be, with the Superior Court, a petition to order the election to be held. A hearing was held for the court, in Anchorage on August the 27th and at that time the decision was rendered that the recall petition, the recall law used this time did not apply to local School Board members, that they were not municipal officials. After that decision, it was appealed by the AFT to the State Supreme Court which wasn't actually sitting yet, and until they were able to get it on the docket it was not, their decision was handed down [105] sometimes this fall and the decision was that the recall law as we used it, did apply.

MR. WALTON: And therefore, what?

MR. WATTS: And ordered a election.

MR. WALTON: And ordered an election?

MR. WATTS: They did not order an election. They ordered - an election was ordered and held.

MR. WALTON: And when was the election held?

MR. WATTS: It was held at the regular time I believe Oct. 4th.

MR. WALTON: Do you know approximately how many votes were cast in the recent recall election?

MR. WATTS: I believe it was around 600.

MR. WALTON: Briefly what were the results of the recall election?

MR. WATTS: One member being up for recall, their term was over, Mrs. Whitmore's term was over this fall and there was no point in pushing that case, so three members of the board were up for recall and all three of them were voted back into office.

MR. WALTON: And their names are what?

MR. WATTS: Mr. Casey, Mr. Jeffrey and Mr. McRae.

MR. WALTON: And approximately what percentage of the votes.

MR. WATTS: About 60 percent of the vote.

MR. WALTON: And incidently, did these gentlemen, Mr. Casey, Mr. McRae and Mr. Jeffrey publicly participate in campaigning?

MR. WATTS: Mr. Jeffrey had moved to Seattle and he was not in the campaign, and Mr. McRae and Mr. Casey both made speeches took active parts in the campaigns.

MR. WALTON: I would like to clear up just one last point in cross examination. Can you tell the Board when the AFT was formed in Seward, Alaska?

MR. WATTS: The American Federation of Teachers was formed, I believe the official date is May the 4th, 1959 and on May the 8th, they had their first meeting with the School Board.

MR. WALTON: Is the AFT like the S.D.T.A. open to administrators as well as teachers?

MR. WATTS: No, the American Federation of Teachers is strictly a classroom teacher's organization and is not a company union.

MR. WALTON: Did this fact have anything to do with its formation for the purpose of its organization?

[106] MR. WATTS: It had a great deal to do with its organization. The National Education Association is comprised of several branches, by far the largest branch is the classroom teachers association and the district teachers association which will include administrators and supervisors. The classroom teachers association branch does not include administrators, only classroom teachers. And there is another smaller branch made up exclusively of administrators. This Seward District Teacher's Association had administrators in it.

MR. WALTON: And I take it the purpose for forming the AFT was to enable certain teachers who were dissatis- with the SDTA vote to proceed through organization to attempt to secure teachers contracts for the four non-retained teachers in the spring of 1959?

MR. WATTS: That is exactly right.

MR. WALTON: No other questions.

MR. BURR: You mentioned the objectives of the AFT included somewhat similar objectives that the AFL-CIO parent organizations had. Is that true?

MR. WATTS: Only that they believe in union support and I'm not sure on this, but I assume in collective bargaining.

MR. BURR: And you further stated that you believed that included all of the legal, what are recognized as legal legal methods of enforcing these bargaining processes.

MR. WATTS: No it does not, necessarily.

MR. BURR: Well, what portion of those processes would you say it does not include?

MR. WATTS: I don't know all of the aspects of it, because we are a new organization, it takes a long time to learn these things, but the major purpose as I stated this morning, is the method by which we attain our objectives, which are similar to the NEA, and that is that we try to get legal decisions, wherever possible.

MR. BURR: Let me rephase the question perhaps. Would you say that the overall objectives of this branch of the Teachers Association branch of the American Federation, the AFL-CIO, would you say that the objectives of the teachers Local roughly coincides with the overall objectives of the objective of unionism as expounded by some of our more known, widely know labor leaders, such as George Meany, Walter Reuther and people like that?

MR. WATTS: The AFT was organized strictly for teachers and teachers purposes which is to secure better conditions for teachers and to protect their interests and rights, as well as raise the standards of education in general. They are only affiliated with the AFL-CIO with relationship to having support for voting strength, when national elections come up, national figures.

MR. BURR: As you're not saying in effect that the objectives, the overall objectives of the AFT are in every case identical with more famous people like George Meany, Wal-

ter Reuther and James Hoffa and Mr. Bridges and so forth?

MR. WATTS: I'm a school teacher I can say that I happen to be I'm not an expert on the union, I have never been an active member in unions before, I've had a carpenter's card but have never been affiliated with them before and I [107] only know mostly what I, pardon the expression, read in the papers or hear on the radio and in national magazines.

MR. BURR: Well, do you consider it a legal objective since you are talking of wanting to keep it in the bounds of the law, do you consider it a legal objective of the American Federation of Teachers to take upon themselves the responsibility of intitiating and supporting a campaign before the public to bring to the attention of the electorate, items of criticism of the school board administration, without first exhausting every reasonable effort to administratively determine those grievances?

MR. WATTS: Are you referring to the open letter to the School Board?

MR. BURR: Yes sir.

MR. WATTS: I feel that we had exhausted every effort, we had made 5 efforts and were unable to reach any sort of a, or even a reasonable meeting with the Board of this matter.

MR. BURR: You had made no appeal prior to the 28th of May of 1959, to the Commissioner of Education on those grievances, had you?

MR. WATTS: I believe a copy of the open letter to the school board was mailed to him on or about the 18th or 19th of May.

MR. BURR: But you had not prior to that time appealed these grievances, so to speak, to him, the Commissioner of Education?

MR. WATTS: Not to my knowledge.

MR. BURR: How long have you been teaching, Mr. Watts?

MR. WATTS: Twelve years.

MR. BURR: And what degree do you hold?

MR. WATTS: A Bachelor or Arts degree.

MR. BURR: How much graduate time do you have - how many graduate hours? Credits?

MR. WATTS: I actually don't know right now - I have some from the University of Alaska just recently, this last summer, but I have some from the University of Kansas, some from mostly from the University of Washington, and I have done quite a bit of study in affiliate work with the University of Washington which has no credit with it, none of it has been in the field of education.

MR. BURR: You have a Bachelor of Arts degree?

MR. WATTS: Yes.

MR. BURR: Where's it from?

MR. WATTS: Southwestern College, Winfield, Kansas.

MR. BURR: Winfield?

MR. WATTS: Winfield, Kansas.

[108] MR. BURR: Is that an accredited school?

MR. WATTS: Completely yes - North Central Accrediting Association.

MR. BURR: Was it at the time that you went there?

MR. WATTS: It certainly was.

MR. BURR: Once again, how many hours, approximately, do you know approximately how many hours of graduate time you have?

MR. WATTS: I can't say right now, it's been a long time.

MR. BURR: Well, would it be ten, fifteen or twenty?

MR. WATTS: Well, ten would be closer to it, I think.

MR. BURR: What are the number of hours required for a Master's degree elgibility?

MR. WATTS: Semester hours would be around 30, approximate.

MR. BURR: In the normal course of events how many years does it take if the teacher is steadily engaged to obtain the graduate hours? I recognize that's a difficult question, but is there in your opinion, any given amount of time that a teacher would normally progress and obtain the required number of hours?

MR. WATTS: It depends largely on how much of a professional teacher a teacher is. I have been in the profession three or 4 times and this last time I've been in the longest.

MR. BURR: Oh, I see. What period of time have you been in the last?

MR. WATTS: Five - seven years.

MR. BURR: Seven years.

MR. WATTS: Yes, here in Seward.

MR. BURR: I notice on the bill of - on this open letter, Exhibit 7 is it, on this open letter you have brought to the attention number 1, item number 1, the alleged illegal non-retention of three teachers, but as I read the paragraph, paragraph number 1, it also reflects that the Board saw fit to correct apparently what was a departure from the teachers tenure law. Is that correct?

MR. WATTS: Item 1?

MR. BURR: Yes.

MR. WATTS: Could you state your question again, since I've looked at it, please?

MR. BURR: The question was the School Board itself took remedial action on concerning the alleged unlawful non-retention on their own, of their own volition the distribution of the letter?

MR. WATTS: Yes.

[109] MR. BURR: Well, what did you hope to accomplish by reciting the alleged illegal non-retention, if there had been corrective action taken by the Board? What did you hope to attain by publicizing this item to the public of Seward? What was your objective?

MR. WATTS: We were trying to remind the School Board that these problems had come up and were very serious problems, we had a great deal of difficulty in resolving.

MR. BURR: But those problems had, this problem in particularly had already theretofore been solved, had it not?

MR. WATTS: I think to a large measure, yes.

MR. BURR: Well, what did you hope to accomplish by publicizing this item to the public of Seward? Were you

attempting to instigate this Board or bring them to public disgrace?

MR. WATTS: We were trying to get the Board to meet with us and to consider all of our problems.

MR. BURR: Did you think by publicizing this to the public of Seward that you would be in a better position to force the Board to meet with you?

MR. WATTS: We felt that all other efforts had failed.

MR. BURR: Did you want to talk with the Board about the alleged unlawful non-retention when that had already been corrected?

MR. WATTS: We would have been happy to talk with them at more length with them, yes.

MR. BURR: Well, was there anything at that point that could be done that had not already been done as the 28th or 18th of May, 1959? The contracts had been restored, had they not?

MR. WATTS: Yes, but the contracts as I understood the meaning of the meeting in this room on May the 8th that the contracts were given, were returned reluctantly.

MR. BURR: They were returned, Mr. Watts?

MR. WATTS: Yes, reluctantly.

MR. BURR: They were returned?

MR. WATTS: Yes correct.

MR. BURR: Well, is there anything more that the Board could than restore the contract?

MR. WATTS: We wanted to go into this and discuss the reasons for it. We had most of the bill of particulars ready, not written like ready, to present to the Board on May the 8th if the Board had not given the contracts back and they gave the contracts back we were ready to let the matter rest until certain things came up the next week that showed us that the situation was not cleared up.

MR. BURR: Well, my original question was as of the 18th of May when you distributed Exhibit 7 in and about the town of Seward there was nothing more that need [110] be done that should be done by the Board to correct what you contended was a departure from the Teacher Tenure Law with regard to paragraph 1 of this exhibit?

MR. WATTS: We felt that this matter should be gone into a great deal more because we did not go into specific things at the open hearing on, school board, on May the 8th, because we did not want at that time to make a public hassle and if we could get accord, agreement from the Board without displaying all of these things.

MR. BURR: What were you seeking from the Board, Mr. Watts - a categorical promise that they wouldn't serve notice of non-retention at any future date?

MR. WATTS: No. What we wanted was they would use proper, legal, ethical methods to do so.

MR. BURR: They recognized their departure from the Teacher Tenure Law by virtue of their tendering the contracts, did they not? Did they not make their amends by tendering the contracts back to the three individuals involved?

MR. WATTS: Technically, yes.

MR. BURR: Allright, technically, then what did you technically hope to accomplish by publizing what appears to be an act of illegality to the public of Seward on the 18th of May after corrective action had been taken, if it was not to bring this Board into public digrace and the Superintendent of your schools?

MR. WATTS: The fact that the Board did not meet with us or make any effort to meet with us the following week after a new set of situations developed, in which we wanted to meet on May the 16th and they refused to meet with us except for one member as an individual met with us and heard our bill of particulars from beginning to end, not as published here but as written up otherwise. We felt that we had not been dealt fairly with and that the problem had only technically been taken care of in that one situation.

MR. BURR: Mr. Watts you have identified several times the exhibit which appears to be the Seward School Board Regulations - here, exhibit 12, you have indicated several time that you were familiar with this document, whatever it is, as of the early spring, 1959 and that you considered your-

self bound insofar as there was a remedy provided for in these regulations -

MR. WATTS: As as long as it seemed to be workable, yes.

MR. BURR: Well, now did you at any time prior to the 18th of May, 1959, make any demand on the School Board or any official in the School System to prove to you that this was binding on you in every respect?

MR. WATTS: I'm sure I didn't make any effort to do so.

MR. BURR: Thank you. You mentioned a while ago under cross examination by your counsel that Mr. Fabricious was reported to have made a statemtnt to you that he was disappointed that you had associated yourself with an individual whose reputation left something to be desired, or words to that effect.

MR. WATTS: Yes.

MR. BURR: A troublemaker, in other words. Did he make reference to any particular [111] invidual?

MR. WATTS: I believe he did - he did not name him, the name was never mentioned.

MR. BURR: Was he referring to Mr. Watts, I mean, Mr. Blue, or perhaps to Mr. Swick?

MR. WATTS: It's a matter of a strong surmise on my part that it was Mr. Swick?

MR. BURR: Do you know whether or not that what he was suggesting or insinuating, assuming that he said this, was groundless or had any merits whatsoever?

MR. WATTS: It came out I believe during the course of the meeting that they had investigated this person and had received a letter from some place that he had taught previously in which the evidence in the letter, or a statement in the letter was so strong that after the first paragraph or so, that someone on the Board asked that that letter be locked up in the files because it was not the kind of letter that they wanted to hear.

MR. BURR: I should like to have this Exhibit marked as Board's Exhibit 15 for identification only. We have no

objections to letting Mr. Swick read that either. I hand you this letter and ask you if that's the letter you made reference to - Exhibit 15?

MR. WATTS: Evidently, it is.

MR. BURR: Well, having read that letter, Mr. Watts, would you say that the statements, assuming that Mr. Fabricius made such a statement - I believe Mr. Jeffrey was referring to the letter.

MR. BURR: Oh, I see, well, assuming that Mr. Jeffrey made a statement such as which you said he did, would you consider his statement to be an absolute unfounded declaration, or would there be something to base on, to base the comment upon?

MR. WATTS: I would think they would want more evidence than that to make a valued judgment that might affect a professional person. I had no way of knowing what was in that letter.

MR. BURR: I'll request that this Exhibit go forward as an exhibit marked only for identification, I don't have any reason for it in this case.

MR. WATTS: Mr. Burr, is it in order for me to clarify a statement made previously, or do I have to

MR. BURR: A statement or a question that I asked you?

MR. WATTS: Yes, and I stated and answer and I don't think I made it clear.

MR. BURR: What was the question?

MR. WATTS: It's a matter on educational qualifications.

MR. BURR: Of yourself or some other?

[112] MR. WATTS: Yes, myself.

MR. BURR: Yes, go right ahead.

MR. WATTS: Allright, we were talking about my educational background, I stated that I had attended the University of Kansas - this is personal reasons. I was in school in the fall and I did quite a bit of my work, I was taking some history courses and some geological courses, and my, I became so ill I had to quit school around the middle of the year, and I left and I came to Alaska not long after and I find I don't

have chronical asthma in Alaska and that's one reason why I'm living here now. I can't live in the middle west and so some of my work at the University of Kansas was not completed for health reasons and would like that for the record.

MR. BURR: I didn't mean to insinuate that you were evicted from any school. If I did, I apologize.

MR. WATTS: No, you didn't.

MR. BURR: Well, having read the bill of particulars, the bill of particulars in the open letter, Mr. Watts, Exhibit 7, can you state at this time that each and every item listed on that document was true in every respect to the best of your knowledge and belief as of the 18th of May?

MR. WATTS: In general, yes.

MR. BURR: You've not changed your mind since the 18th of May, 1959 as to any of these items?

MR. WATTS: Not to any extent, no.

MR. BURR: Well, have you to some extent?

MR. WATTS: I can't say specifically - I would have to analyze each one and go over the evidence carefully with all the evidence and knowledge that I would have at my hand, but in general, I don't see any discrepancies.

MR. BURR: That's all I have.

MR. WALTON: Mr. Watts, on May 8th, the School Board apparently elected to reinstate or to rejuvanate the teacher's contracts which earlier they had terminated, correct? Do you know whether or not the School Board ever did issue these contracts again or issue new contracts to those same non-retained teachers?

MR. WATTS: I don't know all of the specific details, 100%, I believe that two of the teachers received their contracts or an offer to a contract, which would be good faith, I assume on that point. One was given I think within a matter of a few days or a week or so, and the other was sometime quite a bit later. I believe after the person had already obtained a position somewhere else, or had

MR. WALTON: By quite a bit, you mean when?

MR. WATTS: Oh, maybe in June, I believe, maybe.

MR. WALTON: Mr., you have been asked why was the

open letter circulated and why was item 1 included in the open letter, in light of the Board's retraction on [113] May 8th and I believe you stated we wanted to discuss the reasons for the non-retentions. By that, could you explain more fully what you meant?

MR. WATTS: On May the 8th, reasons and motives were not gone into to any extent at all, or maybe not at all, it was the legal technicality involved entirely at that hearing. The next week, two more teachers ran into difficulty in the matter of their contract.

MR. WALTON: Who were they?

MR. WATTS: Mr. Jerry Smith, and his, I'm not sure of the exact terminology, something to the fact because of a fund deficiency or something of the sort, his position in the high school was abolished. I don't know his subjects, but I believe he was teaching Latin, I don't know whether it was Latin, or some other subject like that, and he was offered a position, I believe, a position somewhere in the grades, somewhere in the lower grades. He was a high school teacher, he felt himself to be a highschool teacher and he did not want to take what he considered a demotion. That was what comes under the heading of unreasonable assignment.

MR. WALTON: And who is the other teacher?

MR. WATTS: The other teacher was Mr. Bill Swick.

MR. WALTON: Do you know what happened to him?

MR. WATTS: On Wednesday he received a notice saying that his position had been declared vacant, I believe was the way it was stated.

MR. WALTON: Wednesday, on what date?

MR. WATTS: The Wednesday, May the 8th, I mean May the 13th, as a result of the meeting on the 12th.

MR. WALTON: And the fact that these two teachers ran into difficulties, led the AFT to believe. Did the AFT assume that because these two teachers ran into difficulty, that the reasons underlying the previous non-retentions still existed?

MR. WATTS: We felt very keenly that way.

MR. WALTON: Well, what were these underlying causes which the AFT felt still existed?

MR. WATTS: We felt that the administration of the Seward Schools was either trying to obstruct or trying to prevent the faculty from enjoying the privileges and rights that normal faculties and teachers in the United States are entitled to.

MR. WALTON: As a matter of fact, there was quite a bittnerness of feeling between the AFT members and Mr. Fabricious, wasn't there?

MR. WATTS: I think that would be a reasonable statement.

MR. WALTON: Isn't it a fact that Mr. Fabricious was one of the underlying causes which led you to feel that the reasons for non-retention should be explored?

[114] MR. WATTS: That is probably the whole reason.

MR. WALTON: Had the AFT endeavored to explore this particular and paramount nature with the Board?

MR. WATTS: Will you state that again?

MR. WALTON: Had the AFT endeavored to explore this particular facet with the Board?

MR. WATTS: We had tried to meet with them.

MR. WALTON: And, specifically, when?

MR. WATTS: On May the - well we met on May the 8th, and no bill of particulars was presented there because the contracts were given -

MR. WALTON: When did you, if ever, discuss these matters with the Board - with any member of the Board?

MR. WATTS: We discussed - not until May the 16th did we make this effort and that is the reason why we asked for the meeting of May 16th, was because of the situation arising from Jerry Smith and Mr. Swick's non-retention or position being abolished.

MR. WALTON: And that was the meeting with Mr. Howell?

MR. WATTS: That is right.

MR. WALTON: And how long did the meeting last?

MR. WATTS: It must have lasted close to two hours.

MR. WALTON: And did you discuss with Mr. Howell all the matters contained in the open letter, Exhibit 7?

MR. WATTS: We did – not listed in that way, however.

MR. WALTON: Was Mr. Howell able to make any kind of, make any insurance to the AFT that a correction of these problems would result?

MR. WATTS: Mr. Howell made his position very clear at the beginning and at the end of the meeting, that he was there, that while he was a member of the Board, he was there primarily, he was there actually unofficially as a private citizen, because he could not act as a board unless the Board was in session.

MR. WALTON: Mr. Watts, did you report to work in the fall of 1959?

MR. WATTS: Yes I did.

MR. WALTON: I'm sorry, I mean in the fall of 1960?

MR. WATTS: The first day of school.

MR. WALTON: Can you tell me who was with you when you did so, if anyone?

[115] MR. WATTS: Mr. Swick and Mr. Blue and I went together to the High School and to the Grade School. Mr. Blue went first to the High School because that is where he formerly taught and that is where he would normally appear to start performing his duties as teacher.

MR. WALTON: And where did you report for work?

MR. WATTS: A few minutes later I went to the Grade School to report to Mr. Frampton.

MR. WALTON: And do you recall what date it was?

MR. WATTS: Well, it was the first day of school, in the fall.

MR. WALTON: Could you tell the Board what then there occurred?

MR. WATTS: I believe it was the sixth of September, 1960. What was your question?

MR. WALTON: Could you tell the Board what then and there occurred?

MR. WATTS: At the Grade School?

MR. WALTON: When you reported for work.

MR. WATTS: At the Grade School building? Alright. Mr. Swick, and Mr. Blue and I went in to the inner hall and started to go into the office, but Mr. Frampton came by, and as he came by, Mr. Swick who would normally be reporting there for duty, said something to Mr. Frampton, I'm not sure what it was, like we're here for an assignment, and Mr. Frampton said sorry, and went on down to the primary section of the building. We stood across the hall, against the wall, waiting for him to come back when he had more time to speak to me in a more adequate fashion and at that time Mr. Frampton, or Mr. Fabricious walked in and we had just come from the High School a few minutes before and he said something about you guys being here again, and I said I hadn't been here since last spring, and I believe Mr. Swick said something along the same line, that he hadn't been here for even a longer period of time, and then he, I don't remember whether anything was said, but he walked over a few feet in front of us to the door and said something about the place smells bad, or said something like that, and then he came back to where we were standing and said something about, I can't remember whether he said something to me first, or to Mr. Swick, but he said Mr. Swick, are you crazy? And I don't remember whether there was an answer or not, then I believe we said what we were there for, to report for work - I didn't say anything.

MR. WALTON: I take it that you resumed your duties?

MR. WATTS: Oh no, I went out in about 30 seconds or a minute later.

MR. WALTON: No other questions.

MR. BURR: A few questions I want to redirect. Do you believe that your membership in the American Federation of Teachers, Mr. Watts, would entitle you through its membership to do anything that you could not as an individual schoolteacher in the Seward School System do individually?

MR. WATTS: Ethically I would not do anything as the

member of the AFT that I would not do as an individual.

[116] MR. BURR: Do you believe that your membership in the AFT would entitle you to carry on a program, or to be a part of a program such as Exhibit 7, which is the open letter to the Seward School Board. I am assuming this is done under the auspices of the AFT.

MR. WATTS: Just the same as if it had been under the Seward District Teacher's Association. I would assume so.

MR. BURR: Well, it's signed by an organization which purports to be the American Federation of Teachers, Seward Local, isn't it?

MR. WATTS: That's right.

MR. BURR: And you're a member of that?

MR. WATTS: Yes.

MR. BURR: And you were at that time?

MR. WATTS: Yes.

MR. BURR: Well, do you believe that organization was licensed to do something that you couldn't do as an individual?

MR. WATTS: Ethically no.

MR. BURR: So you don't believe that your membership in the AFT at that time in May of 1959 inslighted you from responsibility for your participation in the distribution of Exhibit 7 in the City of Seward, if in fact, you are to be held responsible for that individually?

MR. WATTS: I think I can be held responsible individually and collectively to the same degree.

MR. BURR: You have known Mr. Fabricious for approximately how long, Mr. Watts?

MR. WATTS: About 26 or 27 months.

MR. BURR: And during this period of time you have had numerous dealings, more officially than unoffically with him, have you not?

MR. WATTS: Yes, mostly officially.

MR. BURR: Do you know him to be a liar or have the reputation of being a liar?

MR. WATTS: Knowing a person to be something like that

means that you have to have first hand knowledge yourself.

MR. BURR: I'm speaking of your own personal dealings with Mr. Fabricious and based upon those experiences. Do you know him to have the reputation in your opinion based upon your experiences, of being a liar, or a teller of untruth, or a fabricator of facts, whatever you want to call it. A teller of fables, a messenger of untruth?

MR. WALTON: Very well -

[117] MR. BURR: Is he any of these, Mr. Watts? In your opinion - or all of them?

MR. WALTON: Excuse me, may I inqure is the question "Are you familiar with his reputation as such" or is the question "Do you think he is such" - which?

MR. BURR: Well, Mr. Watts is my witness and unless he is confused and asks for Mr. Walton's assistance I'm going to ask him to answer my questions.

MR. WALTON: Mr. Chairman, I would appreicate it if one question were asked at a time and not 6 or 7. I confess I'm not sure exactly what the question is at this time.

MR. BURR: Well, you don't have to answer the question, Mr. Walton, fortunately.

MR. WALTON: Mr. Chairman, may I ask that the counsel be encouraged not to engage in argument with me. I think we should both direct our remarks to the chair and let him rule.

MR. BURR: I'll request a ruling.

MR. CASEY: Could you clarify that Mr. Burr, a little bit for him.

MR. BURR: Fine. You've known Mr. Fabricious for 27 months - you've had dealings personally in public and private with him during this period of time. Is that your testimony?

MR. WATTS: I have know him about that long.

MR. BURR: Well, during that 27 months and in your dealings with him had you had the opportunity of forming an opinion as to his reputation for veracity, good, bad or indifferent?

MR. WATTS: Very difficult for a person to know.

MR. BURR: Have you the opportunity to form an opinion? If you haven't, all you've got to do, is say no.

MR. WATTS: My opinion is based on a degree.

MR. BURR: I'm not asking you to perpetuate an opinion of somebody else, Mr. Watts. I want to know did you personally have the opportunity of formulating an opinion of the reputation of Mr. Fabricious' veracity or truth-telling?

MR. WALTON: Without trying to be obstructive. May I object, I can't see the relevancy. I think this is clearly beyond the scope of this inquiry. What Mr. Watts' private opinion may be, I can't see has no relevance to the charges which were leveled in the bill of particulars.

MR. BURR: You want a ruling, do you?

MR. WALTON: Oh, I certainly do.

MR. CASEY: Objection overruled, will you answer the question please.

[118] MR. WATTS: State your question and I will answer it.

MR. BURR: During the period of 25 months that you've known Mr. Fabricious and in your own individual dealings with him, both public and private, have you had an opportunity of forming an opinion as to his reputation for truth-telling?

MR. WATTS: No.

MR. BURR: Thank you. What is the last Board Exhibit - 15. I would like to have this exhibit, Exhibit 16, which is a letter to - from the Seward School Board to Mr. Fabricious. I would like to hand exhibit to the witness and ask if you have ever read that document or had that document read to you or had it read in your presence. And if so, when?

MR. WATTS: I cannot remember ever seeing this document - do you want me to identify it?

MR. BURR: Yes, can you identify the document?

MR. WATTS: I have never to my knowledge read this before.

MR. BURR: To your knowledge, has it ever been read to you or in your presence, the substance of it?

MR. WATTS: It may have been read, or it may have been referred to and quoted from, I don't know which it was.

MR. BURR: You do have some recollection of it?

MR. WATTS: Very, very vague - it may be the one referred to.

MR. BURR: I'll offer it as Exhibit. We have no other questions.

MR. WALTON: May I please examine Exhibit 16? No other questions.

MR. BURR: Thank you Mr. Watts. That's all. Next witness will be Mr. Fabricious. Will you raise your right hand. Do you swear the testimony you are about to give to be the truth, the whole truth, so help you God?

MR. FABRICIOUS: I do.

MR. BURR: State your name please.

MR. FABRICIOUS: George Fabricious.

MR. BURR: Your occupation.

MR. FABRICIOUS: Superintendent of schools in Seward.

MR. BURR: How many years experience do you have as a teacher or a principal or as superintendent in total.

MR. FABRICIOUS: About 34 years.

MR. BURR: Have you ever been discharged in the capacity of teacher, or superintendent or principal?

[119] MR. FABRICIOUS: Never.

MR. BURR: What's the longest tenure of employment you've had in anyone location?

MR. FABRICIOUS: 25 years.

MR. BURR: Did you leave under strained circumstances?

MR. FABRICIOUS: I did not.

MR. BURR: You left of your own volition?

MR. FABRICIOUS: That's right.

MR. BURR: What was your last period of employment, Mr. Fabricious?

MR. FABRICIOUS: Six years.

MR. BURR: Where was that?

MR. FABRICIOUS: Kenai.

MR. BURR: And before that?

MR. FABRICIOUS: I was in Wrangall.

MR. BURR: How many years in Wrangall?

MR. FABRICIOUS: Twenty-five.

MR. BURR: As Superintendent?

MR. FABRICIOUS: Fifteen as Superintendent and ten as a teacher.

MR. BURR: Did you leave of your own volition?

MR. FABRICIOUS: I did.

MR. BURR: You're familiar with most of the appellants in this case, are you not, Mr. Fabricious?

MR. FABRICIOUS: Yes.

MR. BURR: And you're familiar with a bill of particulars, or an open letter to the Seward School Board, Exhibit 7 in evidence, are you not?

MR. FABRICIOUS: I certainly am.

MR. BURR: I should like to go down that open letter to the Seward School Board, Mr. Fabricious, and ask you point by point, as to the truth or falsity in your own opinion, based upon your own knowledge of the statements in this open letter to the Board which was distributed in Seward. Item number 1, illegal non-retention of 3 teachers, now will you tell me whether or not, prior to the 18th of May, 1959, the contracts of the three individuals involved had been tendered to them?

[120] MR. FABRICIOUS: Two of the teacher's contracts were tendered, the third could not be tendered as that teacher already held a valid contract in another Alaska city and could not be given a contract in Seward until she had dropped her contract with the other school district.

MR. BURR: Will you tell me a little background on this alleged illegal non-retention. How it came about and what action, if any was taken by the Board, if you know?

MR. FABRICIOUS: The teacher - we attend to the re-election of teachers along in February. Names of all of the teachers are considered individually. Teachers in the Grade School, we have the recommendations of the Grade School principal. In the High School I made my recommendations

from there. Some of the teachers we felt should not be retained in the School System. And we were well aware of the Teacher Tenure Law that required a bill of particulars. That was discussed in the Board meeting at the time of the non-retention and we felt that to put out a bill of particulars, which we knew would be tossed and booted around the community would do the teachers far more harm than it could possibly do any good. So teachers were notified that if they wished to discuss their non-retention that they were certainly privileged to do so and they would then have been given a bill of particulars. Now in at least two instances of the teachers that I recommended non-retention of, I had several discussions with them previously and had told them why I did not feel their contracts should be renewed.

MR. BURR: Did anyone of the three individuals request a bill of particulars prior to the action taken by the AFT?

MR. FABRICIOUS: *None of them did.*

MR. BURR: Would you have honored a request to furnish this bill of particulars?

MR. FABRICIOUS: I certainly would. I would have honored any request if it had been given to me.

MR. BURR: Then the reason for not furnishing the bill of particulars at the outset was to protect they, themselves?

MR. FABRICIOUS: That was our intention.

MR. BURR: To protect their reputation.

MR. FABRICIOUS: That is right. We felt to put out a bill of particulars to be kicked around the community, it would be something that would follow them and if they wanted to go to other places, it could be detrimental to them.

MR. BURR: But as of the 18th of May, will you tell me whether or not, corrective action had been taken, in fact, by the Board?

MR. FABRICIOUS: It had.

MR. BURR: All right. Directing your attention to Item number 2 which reads, I'm reading from Exhibit 7 which says "Legitimate duty of administration to maintain or

create harmony in the school and the tension [121] noted in the pupils and the friction which some of them were aware of does not meet this requirement. Do you have any knowledge of any complaints that had been heretofore brought to your attention.

MR. FABRICIOUS: None. I was aware that there was friction but I don't feel that it was lack of harmony, and I didn't feel it was lack of harmony due to the administration. I felt that the lack of harmony was due to certain activities being carried among the faculty.

MR. BURR: Did Mr. Watts or Mr. Blue, either or in connection with each other, make any official complaint in the nature of a grievance to you as an individual concerning item number 2?

MR. FABRICIOUS: Never.

MR. BURR: Prior to the 18th of May, 1959.

MR. FABRICIOUS: They never did.

MR. BURR: Directing your attention to Item number 3 which says non-compliance of Fire Drill Regulations requiring ten fire drills per year.

MR. FABRICIOUS: That is correct. We did not have 10 fire drills in accordance with regulations.

MR. BURR: Was this ever brought to your attention by Mr. Blue or Mr. Watts prior to the 18th of May, 1959.

MR. FABRICIOUS: It was never brought to my attention.

MR. BURR: Item number 4, ordering the custodian Jesse Moore to do technical electrical work, beyond his skill in a dangerous building. Was that presented in the form of a complaint or grievance by Mr. Blue or Mr. Watts prior to the 18th of May, 1959?

MR. FABRICIQUS: It was not.

MR. BURR: Item number 5. On different occasions threatening to get rid of one-third of the faculty this year and one-half of the remainder next year and the remainder of the statements in that paragraph. I should like to ask you whether you have ever made any one or more of those statements to either Mr. Blue or Mr. Watts or in their presence?

MR. FABRICIOUS: I don't recall that I ever made such a statement and least of all would I ever make it to Mr. Watts whom I knew would bat it about the community as rapidly as he could. Now as far as the teachers their property and taxpayers that is not my responsibility, my selection of teachers or my recommendations for teachers is on the basis of their teaching ability and their services in the school system - not whether or not they are taxpayers or hold property - that's their private business and has no connection with the school system.

MR. BURR: Mr. Fabricious, prior to the 18th of May, 1959, did either Mr. Blue or Mr. Watts ever present to you one or more of these items in the form of an official grievance?

[122] MR. FABRICIOUS: No.

MR. BURR: Directing your attention to item number 6 - provoking the resignation of an outstanding teacher by forbidding him to ride on the school bus which seems to be in violation of the intent of the rules and regulations, etc., etc. Was that ever presented to you in the form of an official grievance by either Mr. Blue or Mr. Watts prior to 18th of May, 1959?

MR. FABRICIOUS: Definitely not.

MR. BURR: Is it true?

MR. FABRICIOUS: It is not. As a matter of fact, Mr. Condor presented his resignation.

MR. BURR: Do we have evidence of that resignation - was it introduced as evidence? Do you have it there, I would like to offer it. At this time I would like to offer the letter of resignation of Mr. Condor as an Exhibit.

MR. WALTON: I should like to see it.

MR. BURR: Yes. Could we adjourn for just a minute?

MR. WALTON: Why don't you make it out later. No objection to this later.

MR. BURR: Well, I would like to offer it at this time as Exhibit 17.

MR. CASEY: We will call a 5 minute recess. Court recessed at 2:40 PM.

MR. BURR: I have Exhibit 17 and 18 which I would like to offer at this time. Can I have Exhibit 16 please? Will you identify Ex. 16 & 17 or 17 and 18, please?

MR. FABRICIOUS: 18 is the resignation of Mr. Jack Condor, no. 17 it is. And 18 is the transcript of the conversation that took place at the time of his resignation.

MR. BURR: Mr. Fabricious, directing your attention also to paragraph 6 of Exhibit 7, the part that says the apparent authoritarian mishandling of this resignation, impairing the teacher's chances for a teaching position elsewhere. Do you know of any attempt on the part of Mr. Condor to seek a teaching position elsewhere?

MR. FABRICIOUS: I know of no attempt.

MR. BURR: Do you know whether or not that his resignation here would in any manner be reflected on his attempts to get other educational—

MR. FABRICIOUS: No one ever wrote to me regarding Mr. Condor and his work here in Seward, either asking for a recommendation or wanting to know anything about him. So I have no knowledge as to whether he had ever asked a position, or sought a position any place else.

MR. BURR: Was he fired from the Seward School System?

MR. FABRICIOUS: He was not.

[123] MR. BURR: On the second page of Exhibit 7 I would like to ask you whether or not the statement contained therein was ever submitted to you in the nature of a grievance by either Mr. Blue or Mr. Watts prior to May 18, 1959?

MR. FABRICIOUS: You mean 7? No.

MR. BURR: Is number 7 true in your opinion?

MR. FABRICIOUS: I know of no case of dictatorial treatment, some people might construe giving orders dictatorial treatment, but as an administrator you are in a position where it is sometimes necessary to give orders, and there are some people who always consider orders as dictatorial.

MR. BURR: Did you ever intentionally, or with any

malice or forethought, cause any teacher under your control, to do or say anything that would require of necessity a loss of personal dignity?

MR. FABRICIOUS: Not to my knowledge.

MR. BURR: Would you at this time make such a request.

MR. FABRICIOUS: No, I wouldn't.

MR. BURR: Has that ever been submitted to you in the nature of a grievance, or any of your activities, by any teacher under your control?

MR. FABRICIOUS: No.

MR. BURR: By Mr. Watts or Mr. Blue?

MR. FABRICIOUS: No.

MR. BURR: Number 8 on Exhibit 7 says that speaking in a peremptory and a threatening manner in the presence of a pupil to Mr. Smith. Will you explain that please?

MR. FABRICIOUS: It so happens that during the spring here we had a number of students who took an extra day off and skipped, so we gave them detention for a certain period of time and a research paper to write. These youngsters were required to remain after school each night for a certain period of time. The teachers were scheduled for duty to stay with these children in the evening. In the schedule of duties, I myself took duties for any other teachers. One evening of which we were speaking here, I was in the office, Mr. Blue happened to be conveniently present, and Mr. Smith came down at almost 4:20, waving his hands and yelling, saying "I won't take this detention, you can't make me take this detention, the kids up there are screaming wild, and the radio's blasting in there, I won't take that detention, you can't make me take it." That's just about the way it went, throwing his hands around. I said practically nothing to Mr. Smith in the meantime - I went out in the hall and he continued to exclaim and I said, no, you don't have to take it, you don't have to work here at all. He said, alright, I quit. And I said, go ahead and quit, and that's about the size of it.

MR. BURR: Now, Mr. Fabricious, was the supervising

of the detention in the nature of a duty as you understood it.

[124] MR. FABRICIOUS: It certainly was.

MR. BURR: Was this individual singled out as the only one to take this duty?

MR. FABRICIOUS: Definitely not.

MR. BURR: Were there other teachers assigned similiar duties?

MR. FABRICIOUS: Other teachers were taking their duties with no remarks about it or anything else.

MR. BURR: Were there any present - any pupils present, when this little fiasco took place?

MR. FABRICIOUS: Yes there was one student present - a student that had been sent down there by Mr. Smith.

MR. BURR: Do you know this to be a fact?

MR. FABRICIOUS: Yes, that's right.

MR. BURR: What is the student's name?

MR. FABRICIOUS: Owens - I can't think of his first name. Dennis Owens.

MR. BURR: Did you speak with the pupil on this point?

MR. FABRICIOUS: No, I said nothing to the student. I merely asked him why he had been sent down there, and he said he didn't know why he had been sent down there. His remark was that I dropped the top off my pen and he sent me down here.

MR. BURR: And he, you're referring to Mr. Smith?

MR. FABRICIOUS: No, it was Mr. Smith who sent the boy down there, yes.

MR. BURR: Was the, was the substance of this conversation with Mr. Smith ever presented to you in the nature of a grievance by either Mr. Blue or Mr. Watts prior to May 18, 1959?

MR. FABRICIOUS: No.

MR. BURR: By anybody?

MR. FABRICIOUS: No.

MR. BURR: Directing your attention to number 9 on Exhibit 7 which states "two specific instances have occurred

violating the requirements to provide educational leadership in the local regulations and they have sub-paragraphs a, b and c. Would you be kind enough to explain each of those?

MR. FABRICIOUS: A which says neglect to develop a proper music program. That, of course depends upon the need of a good music instructor first of all.

[125] MR. FABRICIOUS: In the Fall, when school first started, Mr. Swick came to me and asked me for somewhat of a change of duties. He said, I'm not a music man, I'm a band man. That was the start of it. I agreed with him - he's not a music man. He did not develop a music program but that could scarcely be the blame of the administration. I might further enlarge on that by stating that when it came to the Music Festival in the Spring, this too was brought to the attention of the Board, that Mr. Swick was given notice from Anchorage about the Music Festival, all the forms and all for submission to participate in the Music Festival. Mr. Swick failed to send in any of this and it came up to almost the day of the Festival that we were notified that we had nothing in and that we weren't even on the program. So I called Anchorage about it and they came right back on the phone and said this material was sent to our music man some time ago. I called Mr. Swick about it in the Grade School and asked him about it. And he said yes, he finally admitted he had received it, I just neglected to send it in, I thought it wouldn't matter after that. So we immediately contacted Anchorage and I made personal arrangements for the Musical Festival for our participation above Mr. Swick's head.

MR. BURR: Prior to May 18, 1959, did either Mr. Blue or Mr. Watts ever present in the form of a grievance a a charge of neglect for your failure to promote the development of a proper music program?

MR. FABRICIOUS: No.

MR. BURR: Has that ever been presented in the form of a grievance by anybody.

MR. FABRICIOUS: No.

MR. BURR: Sub-paragraph b, says information relative to the Drama Festival in Palmer was not made known to the teachers and student body. Would you enlarge on that point?

MR. FABRICIOUS: Well, first of all, the Drama Festival is something that doesn't pertain to all teachers - it pertains only to the Drama teacher. In this instance our Drama teacher was Mrs. Lowell. She was reluctant to even enter in the Drama Festival and felt that she didn't have youngsters that would make good participation in it. And as a result, we did not participate in it. I might also state that participating in such an affair is an administrative affair, and if I'm remiss in my administrative affairs it's up to the Board to correct me, not a group of teachers.

MR. BURR: Prior to May 18, 1959, was this ever brought to your attention in the form of a grievance by Mr. Blue or Mr. Watts or anybody else to your recollection?

MR. FABRICIOUS: No.

MR. BURR: Is the information true?

MR. FABRICIOUS: No, it isn't.

MR. BURR: Directing your attention to sub-paragraph C - paragraph 9 of Exhibit 7 which states that this same requirement is violated in overtly and [126] covertly driving out Mr. Condor, Mr. Swick and Mr. Smith and possibly others who had a definite contribution to make to the functions of the school. Do you have an opinion as to that?

MR. FABRICIOUS: Well, I would certainly say that when a man resigns because he does not wish to follow regulations approved by the Board, that it certainly is not overtly and covertly driving him out.

MR. BURR: Mr. Swick?

MR. FABRICIOUS: Mr. Swick was offered a contract, yond the April the 10th date set for validation - so we did. a contract with a validation date on it. There came up a new salary bill in which it was felt that the salaries might be changed so the teachers asked if we would go a little beyond the April the 10th date set for validation - so we did. And they were all then notified that April 17th would be

the validation date and I believe it was in, I'm not sure, it was along in May, I believe, that Mr. Swick, before we notified Mr. Swick that his position was being filled. From that time on, from the time that he was notified, from the time of notification, Mr. Swick never contacted me personally, or in writing, or any member of the Board regarding his contract and it was not until May the or September the 8th, that he appeared and asked for his job. Now, may I enlarge on this?

MR. BURR: Yes.

MR. FABRICIOUS: I would like to ask how we are going to operate a school with 30 teachers, if 29 of those don't turn in their contracts and appear on the first day of school and expect to start.

MR. BURR: How many teachers did you have in the system, Mr. Fabricious, in May, 1959?

MR. FABRICIOUS: I believe it was 30.

MR. BURR: How many teachers turned their contracts as you requested?

MR. FABRICIOUS: All of those who expected to return.

MR. BURR: How many of them expected to return?

MR. FABRICIOUS: Oh, I don't recall.

MR. BURR: Approximately.

MR. FABRICIOUS: Oh, I would say twenty-five or six, something like that.

MR. BURR: And by virtue of the fact that Mr. Swick never returned his contract signed as requested and as he was so advised what effect, if any, did it have on the action of the Board?

MR. FABRICIOUS: Well, the fact that he did not return it left them in no position other than to fill it with someone else.

[127] MR. BURR: And was Mr. Swick so advised?

MR. FABRICIOUS: He was.

MR. BURR: And did he thereafter, after being so advised make any attempt to revoke this Board's action, or notice of the Board that they were going to declare his position vacant?

MR. FABRICIOUS: No.

MR. BURR: And you had no contact with him until you say in September?

MR. FABRICIOUS: That's right.

MR. BURR: At which time he did what?

MR. FABRICIOUS: He appeared at the Grade School and asked about his position and Mr. Frampton notified him he didn't have one. That same night was Board meeting night, so he appeared at the Board and he was asked by the President of the Board if he had something he wished to present, and he said yes. He wished to ask about his contract. So I immediately read an opinion from you regarding validation dates in contracts and I also read the statement from Howard Matthews, then Commissioner of Education, regarding validation dates of contracts and saying that it was conceded in practice, in fact this state itself does carry on such a practice. And he was notified then that he hadn't even yet presented his contract. Mr. Swick then remarked "have you had your mail today?" and I said yes, but I've nothing from you. As far as I'm concerned, and as far as the Board is concerned, the contract never did reach their hands.

MR. BURR: The third individual is Mr. Smith. Now what did the Board, or did you have to do with him?

MR. FABRICIOUS: Mr. Smith was notified that we were curtailing the high school faculty inasmuch as that year the Territory had increased the teacher-pupil ratio, and I felt that he was the least valuable of the teachers in the system, and should be then, the first to go.

MR. BURR: Can you tell me whether or not it was within the realm of your responsibility to declare positions vacant?

MR. FABRICIOUS: I didn't declare - no it's not my action.

MR. BURR: Was it a Board function?

MR. FABRICIOUS: That's a Board function.

MR. BURR: Did the Board make such a determination?

MR. FABRICIOUS: That's right.

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APPENDIX VOL. II

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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 325

JAMES A. WATTS AND WALTER B. BLUE, PETITIONERS,

vs.

SEWARD SCHOOL BOARD AND STATE BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, RESPONDENTS.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF ALASKA

PETITION FOR CERTIORARI FILED JULY 3, 1967
CERTIORARI GRANTED OCTOBER 9, 1967

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MR. BURR: Did Mr. Smith ever challenge the Board in their determination of declaring that excess position?

[128] MR. FABRICIOUS: Never.

MR. BURR: Did he ever, or did Mr. Blue or Mr. Watts ever present in the form of a grievance to 18 May, 1959, anyone of the three situations involving Condor, Swick or Smith, to you as Superintendent?

MR. FABRICIOUS: No.

MR. BURR: Did anybody also on their behalf present in the form of a grievance?

MR. FABRICIOUS: No.

MR. BURR: Number 10, paragraph 10 in item 7, Exhibit 7, is an allegation of the firing of Mrs. Davis on the basis of personal dislike, rather than for dereliction of duties or inefficiency. Will you tell me whether or not Mrs. Davis was released from the school system?

MR. FABRICIOUS: She was.

MR. BURR: Was she fired?

MR. FABRICIOUS: You could call it that.

MR. BURR: Was she a teacher?

MR. FABRICIOUS: No.

MR. BURR: What was her position?

MR. FABRICIOUS: She was a personal secretary.

MR. BURR: And whose secretary was she?

MR. FABRICIOUS: Mine.

MR. BURR: Was she there when you came into the system?

MR. FABRICIOUS: She was.

MR. BURR: Is there any obligation to your knowledge, or any regulation that required the keeping of the secretary that you had?

MR. FABRICIOUS: When I came on the position in Seward, the School Board told me that it was my privilege to select my own secretary. I stated then that since there was one there and I knew no one in Seward, I would try it out.

MR. BURR: Did you try it out?

MR. FABRICIOUS: I did.

MR. BURR: How long?

MR. FABRICIOUS: Oh, I don't know, about 8 months.

[129] MR. BURR: Was Mrs. Davis' services satisfactory?

MR. FABRICIOUS: In my consideration, no.

MR. BURR: Did you so advise her.

MR. FABRICIOUS: I did.

MR. BURR: And what did you do, if anything?

MR. FABRICIOUS: We notified her that at the end of the year she would receive a month's salary and that would be termination.

MR. BURR: Was your reason for releasing Mrs. Davis based on personal dislike, distinguished from dereliction reliction or an incapacity to perform her duties?

MR. FABRICIOUS: I feel as a personal secretary you have the right, for personal reasons or any other reasons, for letting a personal secretary go. A person working closely as a personal secretary, there are certain relationships there that have to be preserved.

MR. BURR: And for reasons which are personal to you perhaps, you saw fit to release her and that in your opinion that was within the scope of your responsibility?

MR. FABRICIOUS: Definitely.

MR. BURR: They further state in paragraph 10, the releasing of this secretary resulted in public discussion, reflecting adversely on the school and placing Mrs. Davis in a position of consulting an attorney relative to her salary. Now, is that true?

MR. FABRICIOUS: To the best of my knowledge, if there's any discussion of it, she made it, and as far as the lawyer, consulting a lawyer, no lawyer ever contacted me or the Board.

MR. BURR: Was any portion of paragraph 10 ever presented to you in a form of an official grievance by Mr. Blue, Mr. Watts or anybody under their auspices prior to the 18th of May, 1959?

MR. FABRICIOUS: No. Mrs. Davis herself came before the Board, but had no connection with any of the teachers.

MR. BURR: All right, You have heard the testimony of Mr. Brown, yesterday afternoon, Mr. Fabricious, wherein he stated that he had a conversation with you in the Fall of 1958?

MR. FABRICIOUS: Yes.

MR. BURR: Will you tell me your recollection of that conversation?

MR. FABRICIOUS: Well, to a certain extent, the conversation was much as Mr. Brown has stated. An implication there slightly different. We were discussing teachers who were getting into these problems and how it would be reflected upon them, and I believe I pointed out an incident [130] that happened in Wrangell a year or so before in which 10 teachers I believe, demanded of the Board that they fire the Superintendent or they quit, and the Board called their hand on it and I happen to know a list of those teachers were on the blotters of Superintendents throughout Alaska, and I felt that teachers that get into that sort of thing, it could happen not only there but other places, because when teachers leave a system, they want to know why they left, and while a teacher might not be satisfactory in one community they might work out very well in another, but they don't want people who are going to stir up trouble in any system.

MR. BURR: Did you discuss this fully with Mr. Brown?

MR. FABRICIOUS: On that point, that's about the point of the discussion.

MR. BURR: Do you recall his making any discussion of whether or not he should buy a house in Seward?

MR. FABRICIOUS: Yes, he did ask me about that.

MR. BURR: What, if anything, did you say?

MR. FABRICIOUS: I recommended that he not buy one.

MR. BURR: What was your reason for that?

MR. FABRICIOUS: Well, first of all, I felt that new teachers in the community, they were taking a risk, and buying a home, I didn't feel it was a good investment in real estate in Seward at that time.

MR. BURR: Did you have any personal dislike or animosity towards Mr. Brown?

MR. FABRICIOUS: Definitely not.

MR. BURR: How long had you known him prior to the Fall of 58?

MR. FABRICIOUS: I hadn't know him prior to that.

MR. BURR: Will you tell as whether or not there was any probationary period for new teachers in the Seward School System?

MR. FABRICIOUS: Not according to law but you always feel that a new teacher has many problems to go over and I did talk to Mr. Brown about his problems. In fact, contrary to his testimony, I talked to Mr. Brown, I think, at least three different times during the year and discussed his problem with him and even prior to the time of reelection of teachers, I told Mr. Brown it was doubtful that I could recommend his reappointment to the system for several reasons and I pointed out these reasons to him. One of them was the complete lack of control of the youngsters in his class. There was a continual stream of youngsters coming from his classes to me for disciplinary action and as far as his being required to do maintenance work. That's completely erroneous. He was asked to fix up the shop, that was all. He never saw fit to even spend a little extra time fixing up the shop for his own classwork. But he was never asked to do maintenance work.

[131] MR. BURR: Was your decision to, was the Board's decision, in your opinion, for non-retention of Mr. Brown, based upon anything other than non-satisfactory performance?

MR. FABRICIOUS: No.

MR. BURR: Has Mr. Brown to your knowledge ever made any statement subsequent to this notice of non-retention relative to his teaching?

MR. FABRICIOUS: Well, he has made a remark that actually I did him a good turn, because he didn't like teaching anyway.

MR. BURR: Did Mr. Brown to your knowledge, within your knowledge, ever make any attempt to appeal the notice of non-retention?

MR. FABRICIOUS: No.

MR. BURR: Did he ever challenge any of the basis given for his notice of non-retention?

MR. FABRICIOUS: No.

MR. BURR: I'm going to hand you Board's Exhibit 16 and ask you if you can identify that document.

MR. FABRICIOUS: Yes, this is a letter following a Board discussion in which we discussed something of the problems, the talk, and the inner strife that was going on in the Grade School asking me to read to the teachers in Seward and to state some of my points.

MR. BURR: Do you know whether or not that was read in the presence of Mr. Watts or Mr. Blue?

MR. FABRICIOUS: I know it was read in the presence of Mr. Watts - I'm not so sure about Mr. Blue.

(Private discussion between counsel.)

MR. BURR: Thank you.

MR. WALTON: May I inquire, sir. What is your educational background?

MR. FABRICIOUS: I had four years at the University of Iowa, a year at the University of Washington and a year at Arizona State.

MR. WALTON: And the degrees that you hold are?

MR. FABRICIOUS: A BA and an MA.

MR. WALTON: Do I correctly understand that all of your teaching experience has been in Kenai, Wrangell or Seward?

MR. FABRICIOUS: That's right. No, I had teaching experience in Washington and Oregon as well.

MR. WALTON: And otherwise, all in the three towns of Alaska not Egeek that you mentioned.

[132] MR. FABRICIOUS: That's right.

MR. WALTON: Tell me, in regard to this conversation you had with Mr. Brown which you just referred to, I believe you explained to him, did you, that there had been some trouble down in Wrangell?

MR. FABRICIOUS: I don't recall the exact words. After all, I didn't expect to have to bring this up a year and a half afterwards, so I wasn't carrying a tape recorder taking notes.

MR. WALTON: How did you happen to have such an accurate recounting of your conversation with Jack Condor, if you didn't have a tape recorder?

MR. FABRICIOUS: What do you mean recording of conversation?

MR. WALTON: Well I presume that the conversation was—

MR. FABRICIOUS: It was a transcript taken at the time of his resignation.

MR. WALTON: Yes. The tape recorder was going, was it?

MR. FABRICIOUS: No, I had Mrs. House, the secretary and took that transcript of it just as it took place.

MR. WALTON: Did you ask her to?

MR. FABRICIOUS: Certainly I did.

MR. WALTON: At the beginning of the conversation?

MR. FABRICIOUS: I reached the point where I felt that things like this had to be taken down and I had Mrs. House take a transcript of what was said, yes.

MR. WALTON: And Jack Condor knew that at the time?

MR. FABRICIOUS: Yes, he knew it.

MR. WALTON: You turned to her and you said, please take down the following conversation, then you had the conversation.

MR. FABRICIOUS: We had what was in the transcript, yes. I don't call it a conversation.

MR. WALTON: May I please have that transcript of the conversation -- I think it's what - 16? 18. You stated that this was transcribed by Mrs. House. Is Mrs. House present?

MR. FABRICIOUS: Yes, Mrs. House is present.

MR. WALTON: I note here with interest this following portion of the conversation "Mr. Fabricious - I suggest immediately you present your resignation and I'm sure the

Board will accept. Mr. Condor: Thank you, Mrs. House, do you have paper? Mr. Fabricious: You're not for the Seward Public Schools, you're completely - then I have a notation here - balance of Mr. Fabricious' conversation unable to [133] record due to paper of Mr. Condor." What was it that you were saying when you said Mr. Condor, you are completely?

MR. FABRICIOUS: I don't recall - it was probably something to the effect, this is just surmising on my part you understand, something to the effect that he was just another teacher in our school and it wasn't up to him to determine our regulations - I don't recall.

MR. WALTON: Now, with respect to the conversaton with Mr. Brown. You advised him, didn't you, that recently in Wrangell before you came here, that 10 teachers-

MR. FABRICIOUS: Not while I was in Wrangell, no.

MR. WALTON: Oh.

MR. FABRICIOUS: That happened after I left Wrangell.

MR. WALTON: The superintendent in question was who?

MR. FABRICIOUS: Oh, I don't recall his name, again - Regal was his name?

MR. WALTON: How did you learn that the names of those 10 recalcitrant teachers came to the board of all the Superintendents in Alaska?

MR. FABRICIOUS: I didn't say I know I did - The Commissioner of Education told me he said - every superintendent in south Alaska got the names. It came up in a discussion with him, that was his statement.

MR. WALTON: Have you ever communicated with other superintendent in Alaska about Appellants, Blue, Watts, or Mr. Swick?

MR. FABRICIOUS: The only one that I've ever communicated with was Saldovia in regards to Mr. Swick.

MR. WALTON: And that inquiry was made I presume in the early part of May, 1959?

MR. FABRICIOUS: It could have been - I don't remember exactly.

MR. WALTON: I believe you received a reply on May 12th, didn't you?

MR. FABRICIOUS: I don't know if I ever received a reply from them.

MR. WALTON: Oh, isn't there one in evidence?

MR. FABRICIOUS: Not to my knowledge. That's from Skagway.

MR. WALTON: Oh. Did you ever write to the School Board in Skagway?

MR. FABRICIOUS: I wrote to several individuals in Skagway - yes.

MR. WALTON: Oh I see, you made inquiries about Mr. Swick, but to only one School Board?

MR. FABRICIOUS: Not at the school where he was employed. He had only been in one school before.

[134] MR. WALTON: I see, and how did you happen to make inquiry at Skagway?

MR. FABRICIOUS: Well, where else would I make it?

MR. WALTON: Why would you make it?

MR. FABRICIOUS: Because I was quite certain Mr. Swick had led the turmoil we had here.

MR. WALTON: By turmoil by that you are referring to the efforts of the SDTA to reinstate certain teachers.

MR. FABRICIOUS: I wouldn't say the SDTA, I felt he had personal reasons for trying to get into

MR. WALTON: Mr. Swick had personal reasons?

MR. FABRICIOUS: Yes, possibly.

MR. WALTON: What sort of personal reasons?

MR. FABRICIOUS: Well, to put it plainly, I felt that he was under the impression that if he could give me the skids then he could be Superintendent.

MR. WALTON: You thought Mr. Swick was gunning for your job, is that it?

MR. FABRICIOUS: Well, not necessarily gunning for it because he didn't have a chance to get it.

MR. WALTON: What were the personal reasons you attributed to him?

MR. FABRICIOUS: State your question again, please.

MR. WALTON: Yes, what were the personal reasons that you attributed to Mr. Swick?

MR. FABRICIOUS: I think I've answered that.

MR. WALTON: Mainly, he was gunning for your job.

MR. FABRICIOUS: He, that he was in this difficulty we were having around here.

MR. WALTON: And by difficulty you are referring to what?

MR. FABRICIOUS: Well, in the turmoil that you're speaking of here.

MR. WALTON: Which turmoil, Mr.—

MR. FABRICIOUS: I said turmoil you're speaking of.

MR. WALTON: You mean the turmoils in the open letter Exhibit 7?

MR. FABRICIOUS: Well, don't they speak of it here?

MR. WALTON: Is that what you're talking about?

MR. FABRICIOUS: To some extent yes.

MR. WALTON: Anything else?

[135] MR. FABRICIOUS: Well, it would be a little hard to dig for it.

MR. WALTON: Let's try.

MR. FABRICIOUS: Alright, let's put it that way, if that satisfies you - that satisfies me.

MR. WALTON: I want the truth - I don't want something—

MR. FABRICIOUS: I'm not giving you anything but the truth.

MR. WALTON: Pardon me?

MR. FABRICIOUS: I'm not speaking anything but the truth.

MR. WALTON: So I presume that that was the only turmoil Mr. Swick was involved in; correct?

MR. FABRICIOUS: It might be.

MR. WALTON: Well, was it to your knowledge?

MR. FABRICIOUS: To my knowledge, yes.

MR. WALTON: And, because you felt that he was involved, you felt you should inquire of persons in Skagway concerning Mr. Swick, correct?

MR. FABRICIOUS: Well, not only that, I also had conversation with my Grade School Principal who had dealt with Mr. Swick and he felt that a little background check was in order.

MR. WALTON: Who did you inquire of concerning Mr. Swick in Skagway?

MR. FABRICIOUS: Several ex-school board members who were in a position to know.

MR. WALTON: And you received replies, did you?

MR. FABRICIOUS: Yes.

MR. WALTON: And, do you have them?

MR. FABRICIOUS: I think I have one here, yes.

MR. WALTON: You have one that's a little derogatory, don't you?

MR. FABRICIOUS: I had another that was also derogatory.

MR. WALTON: Where is that?

MR. FABRICIOUS: I don't know where it is now?

MR. WALTON: Did you get a third?

MR. FABRICIOUS: I don't recall, whether I did or not.

MR. WALTON: I presume that if you made inquiries about Mr. Swick you must have made inquiries about teachers who were involved in this turmoil?

[136] MR. FABRICIOUS: No, I can't say I did.

MR. WALTON: Well, did you?

MR. FABRICIOUS: No.

MR. WALTON: Didn't you inquire about Mr. Blue anywhere, or Mr. Watts?

MR. FABRICIOUS: There was no use inquiring about Mr. Blue he had been here all the while.

MR. WALTON: When was it that Mr. Swick's 1959-60 contract was tendered to him?

MR. FABRICIOUS: Oh, it was sometime - the teacher's re-election took place in February right in mid-February, I would say, and I think the contracts came out sometime early in March. They had notification if they were re-elected.

MR. WALTON: And then, I think up in the upper left hand corner of the first page of this contract there was a

little statement that it should be returned by a certain date.

MR. FABRICIOUS: If it was to be validated, yes.

MR. WALTON: On what date was it?

MR. FABRICIOUS: Oh, if I remember correctly the first date was April 10th.

MR. WALTON: And was that the case in all the other contracts which were tendered to all other teachers?

MR. FABRICIOUS: They were all exactly the same.

MR. WALTON: I see. And was that April 10th date extended?

MR. FABRICIOUS: It was.

MR. WALTON: To when?

MR. FABRICIOUS: April 17th, I believe it was.

MR. WALTON: And you say, you received 27 contracts back?

MR. FABRICIOUS: I didn't say the exact number, but I received all the other contracts back.

MR. WALTON: Yes, all before April 17th?

MR. FABRICIOUS: All contracts for teaching agreements.

MR. WALTON: All, before April 17th?

MR. FABRICIOUS: As far as I can recall, yes.

MR. WALTON: Is it possible that some of the others came back after April 17th?

[137] MR. FABRICIOUS: Well, there's always a possibility you know.

MR. WALTON: And, because Mr. Swick's contract did not come back on April 17th, on May 12th, his position was declared vacant, correct?

MR. FABRICIOUS: Right.

MR. WALTON: Why wasn't his position declared vacant on April 18th?

MR. FABRICIOUS: Well, we simply didn't follow through right away, it was a matter of Board action, and Boards don't meet every day.

MR. WALTON: Well, when did they meet after April 18th?

MR. FABRICIOUS: I couldn't say offhand.

MR. WALTON: You were with the Board on all their meetings?

MR. FABRICIOUS: Yes, but I don't remember every date that we meet, I'm not prepared to do that.

MR. WALTON: You met on April 29th, didn't you?

MR. FABRICIOUS: I don't recall.

MR. WALTON: Well, let me refresh your memory. That there was at least a meeting of the School Board on May 8th, wasn't there?

MR. FABRICIOUS: I couldn't say for sure.

MR. WALTON: Weren't you there? That was the meeting remember when the School Board had to retract its earlier position and issue contracts to the four non-retained teachers?

MR. FABRICIOUS: If that's the date then there was a meeting.

MR. WALTON: Yes. Why was it that - the contract - well, on that date the fact that Mr. Swick's contract had not been returned came up before the Board?

MR. FABRICIOUS: I don't recall.

MR. WALTON: What did you think could be gained by inquiring of persons in Skagway about Mr. Swick? Why did you do that?

MR. FABRICIOUS: I think it's valuable at any time that administrators should know the background of their teachers.

MR. WALTON: Mr. Swick had been working for you up to then almost a full school year, had he not?

MR. FABRICIOUS: That's right.

MR. WALTON: And you suddenly became interested in his background.

[138] MR. FABRICIOUS: That's right.

MR. WALTON: Well, what bearing did his background, at that late date have upon your relationship with him?

MR. FABRICIOUS: Well, as I remarked before I had discussed Mr. Swick with our Elementary Principal and he had given me a little insight into the earlier employment of Mr. Swick and dissatisfaction and I thought it advis-

able to know a little of his background. There was nothing in the record at all here of his background which is rather unusual when a teacher is employed here.

MR. WALTON: And the person you say with whom you spoke was who - Mr. Frampton?

MR. FABRICIOUS: I talked with Mr. Frampton.

MR. WALTON: Mr. Frampton know all about Mr. Swick's background, did he?

MR. FABRICIOUS: No, he didn't.

MR. WALTON: But he was able to tell you about it?

MR. FABRICIOUS: No, he wasn't.

MR. WALTON: What did you talk to him about Mr. Swick, then?

MR. FABRICIOUS: Briefly, about his employment - conditions of his employment - when he was first employed - as little as he knew about it.

MR. WALTON: I believe you've recently made some remarks over the air in the course of this recent recall election in which you referred to the troublesome trio, have you not?

MR. FABRICIOUS: Yes.

MR. WALTON: And who were you referring to?

MR. FABRICIOUS: There they sit.

MR. WALTON: And what are their names?

MR. FABRICIOUS: Watts, Blue and Swick.

MR. WALTON: You feel that they have been causing quite a bit of trouble, do you?

MR. FABRICIOUS: I wouldn't have remarked so otherwise.

MR. WALTON: Do you think this has been aimed against you?

MR. FABRICIOUS: A good deal of it yes.

MR. WALTON: Why - I know you've stated this in respect to Swick - apparently you feel the same thing is true of Blue and Watts. Is that correct?

MR. FABRICIOUS: That's right.

[139] MR. WALTON: Why is it - do you think that

they are - do you think that are motivated by personal animosity?

MR. FABRICIOUS: Oh, I don't know - you could class it as personal animosity - it could be - it's hard to understand why people get involved in some of these things that they get into and they can't back out again.

MR. WALTON: Do you feel it was a mistake for them to tangle with you, do you?

MR. FABRICIOUS: It might have been.

MR. WALTON: Well, what do you think?

MR. FABRICIOUS: I think we'll find out when we get through with this.

MR. WALTON: Why is it - do you think that these people have been stirred, as you suspect, by personal animosity?

MR. FABRICIOUS: I didn't say personal animosity - I didn't call it just personal animosity.

MR. WALTON: How would you describe it?

MR. FABRICIOUS: I felt that they had certain personal aims in mind.

MR. WALTON: And what would their personal aims be?

MR. FABRICIOUS: I pointed out what might be Mr. Swick's - I felt that they resented my position here in the school and they resented an administration that set up rules and regulations and possibly required more of teachers than had been required previously, as evidenced by their resistance of going out to school.

MR. WALTON: This January, 1959 faculty meeting that you had in the Grade School, do you recall that event?

MR. FABRICIOUS: Yes.

MR. WALTON: That was the event in which you carried with you a letter bearing Mr. Howell's signature.

MR. WALTON: Mr. Fabricious answered yes.

MR. WALTON: Do you know who prepared that letter?

MR. FABRICIOUS: No, I don't.

MR. WALTON: Mr. Howell hand delivered it to you, did he?

MR. FABRICIOUS: I don't recall. It could have been given to me at a Board meeting, I don't recall.

MR. WALTON: You had no part in preparing the letter?

MR. FABRICIOUS: Definitely not.

MR. WALTON: I believe it was at that meeting sir, that you stated, according to Mr. Watts testimony, you in the Teacher's Association have started a scandal campaign, to try to get rid of me, you are trying to get [140] the Board to buy back my contract, - I have a three year contract and I will be here long after most of you have gone. In the spring when contracts are let; I will remember who my enemies are. Do you remember saying like that?

MR. FABRICIOUS: You are taking Mr. Watts word for that. I don't agree with Mr. Watts' statement whatever.

MR. WALTON: What did you say on that occasion? Something similar to this?

MR. FABRICIOUS: I don't know what you mean by similiar - I told the teachers that I hated to come before them with anything like this because I felt that it was something that should never need to come up - that you shouldn't need to more or less reprimand teachers for their actions - personal actions - and I also pointed out to the teachers that I was certain that there was many of them there that didn't apply to - and if it didn't apply, there need be no offense. I said I had a three year contract and I don't recall if I stated that they were trying to buy it up - but that remark had been made - in fact that remark had been made in the presence, I believe of Mrs. House over there, I resented that, naturally, and I don't recall just what all was said - but as far as saying that I would remember my enemies and all that baloney - that's just what it is.

MR. WALTON: Well, who was it that started the scandal campaign to try to get rid of you - or did you so state?

MR. FABRICIOUS: I didn't say.

MR. WALTON: You stated, did you not, something about they are trying to get my contract back?

MR. FABRICIOUS: They - I don't know if I said they - I might have remarked that there was a rumor to that effect but I don't think I ever pointed a finger to anyone.

MR. WALTON: And you called a special faculty meeting for this purpose, didn't you?

MR. FABRICIOUS: At the request of the Seward School Board that I read this letter to them which is more of a statement of the code of ethics of the MNA.

MR. WALTON: And as far as you're concerned, it was just rumors?

MR. FABRICIOUS: What was rumors?

MR. WALTON: Oh, the matters to which you referred - that someone was trying to get your contract back.

MR. FABRICIOUS: Oh, as far as I was concerned no one had come to me and said we are going to get your contract back - if that's what you mean.

MR. WALTON: Whenever you hear a rumor such as that as Superintendent, do you automatically call a Faculty Meeting to reprimand teachers?

MR. FABRICIOUS: Of course not. That would be ridiculous.

[141] MR. WALTON: Why?

MR. FABRICIOUS: To call a Faculty Meeting every time I hear a rumor

MR. WALTON: Does it happen so frequently?

MR. FABRICIOUS: *No - don't put the words in my* mouth, please.

MR. WALTON: I believe it was on that occasion Mr. Watts stated that you said it would be unethical and unprofessional for two or more teachers to talk together in the hall.

MR. FABRICIOUS: That is a definite falsehood.

MR. WALTON: I see. You never said anything like that?

MR. FABRICIOUS: I don't recall as I ever said anything like - to say one or two teachers couldn't talk in the hall - that would be ridiculous.

MR. WALTON: Do you remember a Mrs. Barber - Marie Barber?

MR. FABRICIOUS: That's right.

MR. WALTON: She was a member of the AFT, wasn't she?

MR. FABRICIOUS: As far as I know she was.

MR. WALTON: Did you have trouble with her?

MR. FABRICIOUS: I had no trouble with Miss Barber to my recollection.

MR. WALTON: May I mark Appellants Exhibit - what will it be - Number 6?

MR. FABRICIOUS: May I make a remark regarding Miss Barber?

MR. WALTON: Sure.

MR. FABRICIOUS: I don't know what your letter says - but I'm going to tell you what Miss Barber said to me the last day she came and talked to me before leaving school and then you can judge her personality by that. Her remark was how she'd enjoyed working with me here in Seward and she was sorry to leave. Now if her letter is different you can judge the character of Miss Barber from that.

MR. WALTON: Thank you. Did you ever on any occasion, Mr. Fabricious, state that in your opinion school teachers shouldn't be property owners?

MR. FABRICIOUS: No, not to my knowledge.

MR. WALTON: Is that your opinion?

MR. FABRICIOUS: No, definitely not

MR. WALTON: You believe it's nice for school teachers to have homes.

MR. FABRICIOUS: I think there should be a period of time in which they definitely the community and I think they should think of it whether [142] it's property they can buy and resell and come out on top.

MR. WALTON: How long did Mrs. Barber work under your supervision?

MR. FABRICIOUS: One year.

MR. WALTON: Are you familiar with her handwriting?

MR. FABRICIOUS: No, I'm not.

MR. WALTON: Will you examine that - Exhibit - Appellants Exhibit 6?

MR. FABRICIOUS: I agree with the last statement - I would like to qualify it. I would like to read that. I don't mind reading it at all, I would like to qualify part of it.

MR. WALTON: I offer this in evidence. Mr. Fabricious I believe there was also some testimony to the fact that you on occasion, declared that you had to get of 80% of the teachers in Wrangell.

MR. FABRICIOUS: That's a lie.

MR. WALTON: Who so lied?

MR. FABRICIOUS: I don't know - whoever gave you that statement, did lie.

MR. WALTON: I believe there has been testimony here today that, I believe Mr. Watts has testified in effect that on one occasion you declared openly that you had gotten rid of one-third of the teachers this year and that you would get rid of the remainder next year?

MR. FABRICIOUS: I declare it a falsehood.

MR. WALTON: Why would Mr. Watts say a thing like that if it weren't true?

MR. FABRICIOUS: Because I believe he said many things that weren't true.

MR. WALTON: What else?

MR. FABRICIOUS: I don't think we need to go into that - there's a good deal of his testimony.

MR. WALTON: Why not? What were some of the other things he said that weren't true?

MR. FABRICIOUS: Oh, I don't recall all of the testimony. One that I will say. I'll point out one - his statement here that I made, supposedly made, at a Board meeting, that you union members should all have your throats cut - that's a definite falsehood.

MR. WALTON: Did you say anything similar to that?

MR. FABRICIOUS: Nothing, to my knowledge.

MR. WALTON: You are sympathetic to unions, are you, among teachers?

[143] MR. FABRICIOUS: No, I'm not.

MR. WALTON: Why not?

MR. FABRICIOUS: Because I feel that we have other professional organizations that serve the purpose.

MR. WALTON: What's wrong with Teacher's Unions?

MR. FABRICIOUS: I didn't say what's wrong with them - I said I prefer the others.

MR. WALTON: Why?

MR. FABRICIOUS: Because I feel it satisfies the professional requirement - our own organization and I feel that they will do more for us professionally than the AF of T will.

MR. WALTON: The SDTA wasn't able to secure reinstatement for the four teachers who were illegally non-retained, was it?

MR. FABRICIOUS: I don't think the AF of T really had anything to do with getting those contracts back for the teachers. I had had discussions with the Board and we had reached the point where we thought that we were going to have to give them back and it wasn't the AF of T that actually accomplished it at all.

MR. WALTON: When did you have your discussions with the Board and decide to take these teachers back?

MR. FABRICIOUS: Oh, I don't recall - in the spring sometime.

MR. WALTON: Prior to the May 8th meeting, was it?

MR. FABRICIOUS: I think we were pretty well in accord by that time, yes.

MR. WALTON: So that the three or four hour discussions at the May 8th meeting with an attorney was really unnecessary, was it?

MR. FABRICIOUS: I would say so, yes. They would have secured their contracts.

MR. WALTON: Well, why was it that it took three or four hours of arguing with an attorney before it was accomplished?

MR. FABRICIOUS: Oh, I can't give you the answer to that.

MR. WALTON: It is inexpicable isn't it?

MR. FABRICIOUS: It is, yes.

MR. WALTON: Mr. Fabricious, with respect to the Board's Exhibit 12, what purports to be School Regulations, may I inquire sir, did you have a hand in drafting any portion of them?

MR. FABRICIOUS: I had a hand in drafting probably all of it.

MR. WALTON: Did you in fact draft all of it yourself?

[144] MR. FABRICIOUS: They were drafted from various manuals from public schools in Alaska and they were individually considered by all members of the Board and approved by paragraph and topic and all.

MR. WALTON: Did you submit them to the Board for approval?

MR. FABRICIOUS: I certainly did.

MR. WALTON: Do you remember the dates on which they were variously approved?

MR. FABRICIOUS: No.

MR. WALTON: And, who prepared them for approval, yourself?

MR. FABRICIOUS: Yes - no the secretary did.

MR. WALTON: Who was that?

MR. FABRICIOUS: I believe Mrs. Davis was secretary at the time.

MR. WALTON: You allowed Mrs. Davis, a clerical secretary and employee to make up the regulations for the Seward School Board?

MR. FABRICIOUS: To make the copy - just the copying of them.

MR. WALTON: Well, who prepared them?

MR. FABRICIOUS: I did.

MR. WALTON: You wrote them yourself.

MR. FABRICIOUS: The originals were copies prepared by me, they were typed up and I then went over them and in turn the Board went over all of them.

MR. WALTON: They went over them on different occasions didn't they?

MR. FABRICIOUS: I don't remember how many occasions because there had been many times we went through different parts.

MR. WALTON: As a whole the manuscript was not ever on one occasion submitted to the Board for approval, was it?

MR. FABRICIOUS: The entire manuscript? There was a lot of the first part of it that was, yes.

MR. WALTON: But I say the entire body?

MR. FABRICIOUS: No, if you will look at it you will see various dates appended to it that's Board approval.

MR. WALTON: I see. I'm looking now at page 15, section 2, it says thereof, "approved by Seward School Board November 12, 1958" What does that signify?

MR. FABRICIOUS: Well, it signifies that that part of it was approved on that date as far as I can understand it.

[145] MR. WALTON: What was the purpose of such an inscription on the end of a section.

MR. FABRICIOUS: Well, it was just a normal procedure.

MR. WALTON: Who would put that information on the last page of the section in question?

MR. FABRICIOUS: I suppose whoever prepared the manuscript.

MR. WALTON: Who did prepare the manuscript?

MR. FABRICIOUS: I'm not so sure if it was prepared by Mrs. Davis or if it was prepared later.

MR. WALTON: So, actually, if it was prepared by Mrs. Davis she would be the one to know whether or not it was approved by the Seward School Board?

MR. FABRICIOUS: No, she would not.

MR. WALTON: Well, wouldn't she be the one?

MR. FABRICIOUS: Because she would simply be given instructions as to what to put on there. If the Board inadvertently didn't mark on there, or I didn't mark on there the date approved, it wouldn't be in the manuscript.

MR. WALTON: Do you know as a matter of fact, sir, and I ask you to think very carefully, do you recall any occasion on which Section 1, sub-paragraph Capital L, was ever adopted by the School Board?

MR. FABRICIOUS: I'm very certain that it was.

MR. WALTON: I asked you if you specifically remembered any occasion on which it was?

MR. FABRICIOUS: Specific dates?

MR. WALTON: Any specific occasion.

MR. FABRICIOUS: It was approved at a regular Board meeting, yes.

MR: WALTON: Do you remember that Board meeting?

MR. FABRICIOUS: Not specifically, no.

MR. WALTON: So, perhaps it wasn't?

MR. FABRICIOUS: I wouldn't say that, no.

MR. WALTON: It's possible, isn't it?

MR. FABRICIOUS: Anything's possible.

MR. WALTON: Thank you. Have you ever examined the minutes of the School Board to determine whether or not that portion of the regulations were approved?

MR. FABRICIOUS: Yes.

[146] MR. WALTON: You've looked in vain, have you?

MR. FABRICIOUS: I wouldn't say in vain, no.

MR. WALTON: Have you found the answer to your search?

MR. FABRICIOUS: I found a statement in there to the fact that these were being prepared and reorganized for Board approval.

MR. WALTON: I see, but no specific reference to this manuscript?

MR. FABRICIOUS: Part of it is definitely in the minutes, part of it is not definitely recorded in the minutes.

MR. WALTON: Part of it is not definitely recorded in the minutes?

MR. FABRICIOUS: Not as far as I was able to ascertain.

MR. WALTON: I see. So that would indicate that there is no official record of any adoption of at least portions of it, wouldn't it?

MR. FABRICIOUS: You might say there was an indication, but not a fact.

MR. WALTON: Unless there's some other evidence to rebut it, that would be the reliable, sensible—

MR. FABRICIOUS: I would say that an oath on the matter of the Board members would be evidence enough, the fact that this was prepared and given to the Board and distributed to the teachers it would certainly be evidence that they had approved it.

MR. WALTON: You mean to say that by merely you delivering this to the teachers that is evidence?

MR. FABRICIOUS: No I said delivering it to the Board members, and then later to the teachers, it would certainly be evidence.

MR. WALTON: I'm sorry, you mean to say merely delivering those to the Board members is itself evidence of approval of.

MR. FABRICIOUS: I would say their oath to that would be sufficient.

MR. WALTON: Now, Mr. Fabricious, a man's oath, without being based on personal knowledge would really be worth very little, wouldn't it?

MR. FABRICIOUS: Are you going to say that four Board members would definitely falsify a statement to the fact that these had been approved?

MR. WALTON: Mr. Fabricious, perhaps you'd like to answer my question. It is simply this, if a person did not have any personal knowledge of a fact, but nevertheless stated that such was a fact, the mere fact that such a statement would be under oath, would not itself make the statement true, would it?

MR. BURR: I'll object to the question. It's argumentative.

MR. FABRICIOUS: I choose not to answer that.

[147] MR. WALTON: That's your choice. Do you specifically remember preparing sub-paragraph I of Section 1?

MR. FABRICIOUS: To say that I specifically remember each paragraph would be a.little bit ridiculous, but I do remember preparing the entire manuscript, as a manuscript; yes.

MR. WALTON: But you don't remember preparing the parts?

MR. FABRICIOUS: Well - it would be ridiculous to say that I remember every paragraph in there.

MR. WALTON: Well, let me direct your attention to sub-paragraph 7 and 9, sub-paragraph K, Section 1. There has been quite a bit of talk about these paragraphs. Do you remembering those?

MR. FABRICIOUS: I know that they have been in there ever since those books had been printed, that much I do know, because they were very pertinent.

MR. WALTON: Do you remember preparing that?

MR. FABRICIOUS: I would say yes, I do.

MR. WALTON: Now, with respect to sub-paragraph 7 - that's the one which says grievances, complaints and communications from employees shall be submitted to the Board through the Superintendent. Do you think that's a good regulation?

MR. FABRICIOUS: Yes, I do.

MR. WALTON: Why?

MR. FABRICIOUS: Because I think that the Superintendent, first of all, should know about these things, and it prevents a lot of trivia from going to the Board members to act on individually.

MR. WALTON: Do you feel that has happened in connection with the histories of Mr. Swick, Mr. Watts and Mr. Blue?

MR. FABRICIOUS: Not necessarily, no.

MR. WALTON: So they surmise that what they have presented to the Board has not been trivia?

MR. FABRICIOUS: That does not necessarily mean that anything that's not trivial could circumvent the regulations.

MR. WALTON: The matters which they presented to the Board were not trivial, were they?

MR. FABRICIOUS: I would say some of this, if they consider this seven points, here, those ten points, whatever they are, I consider much of that trivial, yes.

[148] MR. WALTON: Well, let's go down that list. What is trivial?

MR. FABRICIOUS: Now, we're getting into a matter of definition.

MR. WALTON: Is item 1 - illegal non-retention of teachers, trivial, sir?

MR. FABRICIOUS: Yes, because I didn't consider it illegal.

MR. WALTON: You felt that because you didn't con-

sider it illegal, it was trivial for someone else to say that it was.

MR. FABRICIOUS: Each of us must make our own determination on many things.

MR. WALTON: I see. And I take it that that is your opinion that the statement that these four teachers had been illegally non-retained, was trivial?

MR. FABRICIOUS: I consider it to a certain extent, untrue - not necessarily trivial, but untrue.

MR. WALTON: You mean they were legally non-retained.

MR. FABRICIOUS: I say that it was an omission, not a matter of legality.

MR. WALTON: Was it lawful for–

MR. FABRICIOUS: Meeting the procedure.

MR. WALTON: Was it lawful for the Board to terminate Armstrong, Svedlund, Brown and Hollenbock as they did?

MR. FABRICIOUS: It was lawful for them to terminate contracts, but they did not follow correct procedure and notify of termination, let's put it that way.

MR. WALTON: But did they terminate their contracts?

MR. FABRICIOUS: They did, yes.

MR. WALTON: They didn't do it the way the Law required, did they?

MR. FABRICIOUS: They didn't follow correct procedure and notify them about it.

MR. WALTON: You think the non-compliance as far as fire regulations is trivial?

MR. FABRICIOUS: No.

MR. WALTON: You don't think it's trivial, do you, if a Superintendent should in fact state that he had, should in fact threaten to get 1/3 of the faculty this year and half of the remainder next year?

MR. FABRICIOUS: You use the word should.

MR. WALTON: I say should a Superintendent say it, would that be trivial?

MR. FABRICIOUS: In this case I consider it trivial, because I know for a matter of [149] fact - but you're going on a supposition.

MR. WALTON: But if a Superintendent should so conduct himself, would that be trivial?

MR. FABRICIOUS: It isn't especially important to me.

MR. WALTON: Would that be pretty normal conduct for a Superintendent?

MR. FABRICIOUS: Not, necessarily normal, not necessarily normal, no.

MR. WALTON: Now, let's consider number 10, refering to the firing of Mrs. Davis, apparently on the basis of personal dislike. I believe you have testified that she was fired for personal reasons.

MR. FABRICIOUS: I don't know if I even stated the reason why. – I said that I felt it was my right if I so wished.

MR. WALTON: Didn't you state in reply - for personal reasons, when Mr. Burr said for reasons that were personal to you and you said yes.

MR. FABRICIOUS: It could be yes.

MR. WALTON: Think back, wasn't that your testimony?

MR. FABRICIOUS: I don't recall exactly.

MR. WALTON: Well, would that be true?

MR. FABRICIOUS: That I fired her for personal reasons? Now, let's define personal reasons.

MR. WALTON: Yes. Why was she fired?

MR. FABRICIOUS: Do you want me to state here. First of all because I didn't feel she was satisfactory in the capacity in which she was employed. I felt that she was trying to usurp authorities that did not belong to her.

MR. WALTON: Any other reasons?

MR. FABRICIOUS: I believe that would be sufficient.

MR. WALTON: Was there any other reason?

MR. FABRICIOUS: There might have been.

MR. WALTON: What were they?

MR. FABRICIOUS: Well, I'll point out one more. I didn't trust Mrs. Davis - that's enough.

MR. WALTON: Was there any other reason?

MR. FABRICIOUS: There might or might not have been.

MR. WALTON: Well, was there?

[150] MR. FABRICIOUS: I would prefer not to go any deeper into this. I have offered sufficient evidence for releasing Mrs. Davis and that's all that you should expect.

MR. WALTON: Mr. Fabricious - in this proceeding, you are a witness and you are asked to answer questions which are relevant and material. One of the questions in this case is whether or not, the statements made in paragraph 10 of the open letter is false. You have volunteered to testify on the subject of why you fired Mrs. Davis and I am now entitled to ask you to answer my questions and I respectfully request that you do so.

MR. FABRICIOUS: I have given, what to me is sufficient reason. You can call it all the reasons for the record.

MR. WALTON: Were they any other reasons?

MR. FABRICIOUS: I would say there were no other reasons.

MR. WALTON: Let's tell the truth, sir - you're under oath. Were there any other reasons.

MR. FABRICOUS: Yes.

MR. WALTON: What were they?

MR. FABRICIOUS: I felt that she had not been working with me as she should. I felt that in the matter of control of students that I expected students to come in and address her as Mrs. Davis, and she had, I know, had asked that they come in and call her Bea.

MR. WALTON: Were there any other reasons?

MR. FABRICIOUS: No.

MR. WALTON: And for the reason that she permitted students to call her by her first name, you felt that she should be fired?

MR. FABRICIOUS: I gave you several other reasons, too.

MR. WALTON: Would that alone be sufficient?

MR. FABRICIOUS: In my estimation, yes.

MR. WALTON: Why didn't you trust her?

MR. FABRICIOUS: I don't see that it's fair to go into something like that, right now.

MR. WALTON: Mrs. Davis, do you object if I ask that question?

MRS. DAVIS: No, I would like to know.

MR. WALTON: Please answer the question.

MR. FABRICIOUS: Because I felt that she was not working in my interest.

[151] MR. WALTON: And that's why you didn't trust her?

MR. FABRICIOUS: That's right.

MR. WALTON: Why wasn't she - why did you feel that way?

MR. FABRICIOUS: Why did I feel that way? It's sometime difficult to say why you feel a certain way.

MR. WALTON: I'm sure it is - but let's try.

MR. FABRICIOUS: I prefer not to answer that.

MR. WALTON: Will you please answer the question.

MR. FABRICIOUS: What was the question, sir?

MR. WALTON: Why did you feel that you could not trust Mrs. Davis?

MR. FABRICIOUS: I'll give you one reason.

MR. WALTON: Just tell me the truth.

MR. BURR: I'm going to object to the manner in which this examination is being conducted. I don't think that Mr. Fabricious has to be admonished to tell the truth, repeatedly, by Mr. Walton. I'll object to the general line of questioning, Mrs. Davis is not on trial here.

MR. WALTON: No, but one of the issues is whether or not, these matters set forth in the open letter is true. I would not admonish the witness to tell the truth, Mr. Chairman, if the witness will desist from giving me just one answer to a question, when there are apparently more than one. So, I appreciate your suggestion, Mr. Burr, I hope it won't be necessary. So, I'll withdraw the last statement.

Mr. Fabricious, please tell me now, why didn't you trust Mrs. Davis?

MR. FABRICIOUS: Well, I didn't trust her in the correspondence because there were times when I gave her copies of correspondence that did not come from her as had been given her.

MR. WALTON: Could you please explain that, I didn't hear you or understand you, sir.

MR. FABRICIOUS: I said I had given her correspondence, writing out a letter to be typed, transmittal for transcript, and there would be times when she would change the wording, and that would change my meaning. and I didn't trust her in that respect. And this is not necessarily a matter of personal trust, but trusting her ability.

MR. WALTON: Then it wasn't done then deliberately, was it?

MR. FABRICIOUS: No, not necessarily.

MR. WALTON: Really, it wasn't a question of not trusting her when you just couldn't rely on her, is that it?

MR. FABRICIOUS: That could be part of it.

[152] MR. WALTON: Did this happen frequently?

MR. FABRICIOUS: I don't recall how often.

MR. WALTON: Well, over 8 months prior, did it happen 3 or 4 times?

MR. FABRICIOUS: Oh I would say about that.

MR. WALTON: Do you remember the morning in which you fired Mrs. Davis?

MR. FABRICIOUS: Yes, I remember it.

MR. WALTON: Do you feel that was the sort of thing that need not be submitted to the Board?

MR. FABRICIOUS: That had been discussed with the Board previously.

MR. WALTON: And you didn't feel you could trust Mr. Swick, either, did you?

MR. FABRICIOUS: I've never said that.

MR. WALTON: Did you feel you could trust him.

MR. FABRICIOUS: I've never at any time expressed any feeling regarding trust or distrust of Mr. Swick.

MR. WALTON: Tell us now, please, do you feel that you could trust Mr. Swick?

MR. FABRICIOUS: In what capacity?

MR. WALTON: As a teacher?

MR. FABRICIOUS: As a teacher, yes.

MR. WALTON: As a subordinate employee?

MR. FABRICIOUS: I would say this that I would not feel that I could rely on Mr. Swick to be always carrying out his work, with respect to hours and time and such as that.

MR. WALTON: But you would not expect him to do anything dishonest?

MR. FABRICIOUS: No.

MR. WALTON: Or self-seeking, with detriment to yourself?

MR. FABRICIOUS: Oh, I wouldn't say that, no.

MR. WALTON: You think he could do that?

MR. FABRICIOUS: I think he could. I think he did.

MR. WALTON: He did.

MR. FABRICIOUS: It's very possible.

[153] MR. WALTON: Well, do you really think he did so or not?

MR. FABRICIOUS: Yes, I do.

MR. WALTON: Especially, in what way?

MR. FABRICIOUS: By attempting to undermine the administration here.

MR. WALTON: By administration you refer to your own position?

MR. FABRICIOUS: To the Board as well.

MR. WALTON: Yes, do you feel the same way of Mr. Watts, do you?

MR. FABRICIOUS: Yes.

MR. WALTON: And, Mr. Blue? You feel they might undermine the position of the administration? For personal gain?

MR. FABRICIOUS: In a sense, yes.

MR. WALTON: And did you feel that way about Mrs. Hollenbeck, also?

MR. FABRICIOUS: No - no.

MR. WALTON: I believe you are familiar with the notices of non-retention and bills of particulars which were addressed to Appellants Blue and Watts?

MR. FABRICIOUS: To some extent, yes.

MR. WALTON: Did you have any part in their preparation.

MR. FABRICIOUS: No.

MR. WALTON: Do you know who prepared them?

MR. FABRICIOUS: I believe the attorneys prepared them.

MR. WALTON: Were they furnished any written information on the basis of which they were prepared?

MR. FABRICIOUS: I believe they were furnished information by the board.

MR. WALTON: Not by yourself?

MR. FABRICIOUS: Not by myself.

MR. WALTON: At the time they were prepared did you have an opportunity to read them before they were delivered to the Appellants?

MR. FABRICIOUS: Yes.

MR. WALTON: And you believe that they stated truth, facts, do you?

MR. FABRICIOUS: Yes.

[154] MR. WALTON: Therein it is alleged, is it not, that the Appellants have been engaged in immoral activities. Do you really believe that the appellants were engaged in immoral activities, sir?

MR. FABRICIOUS: That depends upon the definition of immoral.

MR. WALTON: As you use the word.

MR. FABRICIOUS: As I would define immoral activities, in their attempting to go out, as they did to secure a recall of the Board, I consider that immoral in a sense, yes. In that they were out working against their employing group - the people who employed them. I would feel that

were I to go out to work against my employer, that it wouldn't be consider a moral act.

MR. WALTON: Do you have any rights under the Tenure Law, sir?

MR. FABRICIOUS: I do.

MR. WALTON: Are there any particulars in which you feel the appellants were engaged in immoral activities? If not, please say so.

MR. FABRICIOUS: I'm trying to think of the bill of particulars - that would help me.

MR. BURR: Let me have Exhibit–

MR. WALTON: If it please the Board I would like to ask Mr. Fabricious if he can remember any from his own personal recollection, Mr. Fabricious.

MR. BURR: I should like to if he has no recollection I should like to tender this exhibit for his examination.

MR. WALTON: Mr. Fabricious, can you recollect any without looking at that exhibit in your hands?

MR. FABRICIOUS: I've pointed out one thing.

MR. WALTON: Can you think of any others? Without looking at the exhibit in your hands?

MR. FABRICIOUS: No, I don't believe I can.

MR. WALTON: Do you feel that the Board was proper in indeavoring to non-retain these teachers for that reason as immoral conduct?

MR. FABRICIOUS: I would have objected to it if I felt otherwise.

MR. WALTON: Was the immoral conduct the distribution of the petition, the signing it, or the preparation, or which?

MR. FABRICIOUS: It would be, I would say, the entire activity concerned with trying to remove their employing body.

MR. WALTON: Let us suppose and this in fact may be the case with one of these appellants - my recollection of the testimony is not too clear - let us suppose that one of these appellants in fact only distributed the petition for recall, but did not author and did not even sign it.

[155] MR. WALTON: Would you say that that constituted immoral activity justifying his non-retention as a teacher?

MR. FABRICIOUS: Let me have this question again?

MR. WALTON: If a teacher circulated a petition for recall of School Board members, but did not sign it and did not assist in the preparation of it, would that constitute immoral activities.

MR. FABRICIOUS: I would consider that anyone who would circulate the petition would have to believe in the petition, or he would be very foolish to circulate it, and in circulating it I would say he believed in it and I would consider it immoral, yes, in circumstances such as this.

MR. WALTON: Then I take it you would also consider it immoral for a person to participate in or even sanction the authorship of such a petition?

MR. FABRICIOUS: You say the authorship - no if he was simply acting as somebody to write it up - but if he was writing it up with the idea that he believed in it - then I would say it was, yes.

MR. WALTON: But if he didn't believe in it it wouldn't be immoral? Is that it?

MR. FABRICIOUS: If he didn't believe in it he would be very foolish to take part in it.

MR. WALTON: But it wouldn't be immoral?

MR. FABRICIOUS: If he didn't believe in it - to write it up - just to write out anything has no bearing as long as it's contributed to anyone else.

MR. WALTON: But if it's written out and sanctioned for the purpose of distribution, that would be immoral?

MR. FABRICIOUS: If it's sanctioned by him for distribution, yes I would consider that.

MR. WALTON: I take it that in your opinion, therefore, that all the persons of the AFT who sanctioned the distribution of this particular petition were immoral?

MR. FABRICIOUS: No, because I don't personally think that a great many members of the AFT had anything to do with it.

MR. WALTON: Let us suppose that they did sir, would you thereby conclude that their conduct was immoral?

MR. FABRICIOUS: If they were working against their employing group, yes.

MR. WALTON: And if they in fact were members of a group which voted to, and pursuant thereto did distribute a petition for recall, would they not be guilty of immoral conduct?

MR. FABRICIOUS: Not - in fact I rather question that the most of them ever really had any true chance to vote on this.

[156] MR. WALTON: I give you a hypothetical - simply hypothetical - would these persons be immoral?

MR. FABRICIOUS: Let's have this question again?

MR. WALTON: Members of a group which formally vote at a meeting to prepare, distribute and circulate a petition for recall of school board members - would members of the group which sponsored such a petition be immoral?

MR. FABRICIOUS: I would certainly say that their morals could be questioned in that respect, yes - if they're out as you say to pull down their employing body.

MR. WALTON: Well, if they distributed a petition for recall, what other purpose could they have?

MR. FABRICIOUS: Well, that's it - as I say that's the—

CHAIRMAN CASEY: We will have a five minute recess.

Recessed at 4:05 PM - reconvened at 4:15 PM.

CHAIRMAN CASEY: The meeting will be reconvened.

MR. WALTON: Mr. Fabricious, I refer your attention again to this interesting letter of January 16, 1959, addressed to you, signed by Mr. Howell. Do you recall the letter? Did you say that the Board instructed you to call a Faculty meeting?

MR. FABRICIOUS: They instructed me to bring it to the attention of the teachers, yes.

MR. WALTON: They didn't instruct you to call a faculty meeting, did they?

MR. FABRICIOUS: They instructed me to bring it the to the attention of the teachers.

MR. WALTON: There was discussion between you and the Board before you were so instructed, was there?

MR. FABRICIOUS: That's right.

MR. WALTON: And it states in the first paragraph quote "it has come to the attention of the Board who are not conforming to the accepted code of ethics". Was this paragraph discussed between you and the Board?

MR. FABRICIOUS: I don't recall if it was - there was a general discussion about teacher's ethics and so-forth.

MR. WALTON: Actually, were there any teachers, on January 1959, who were not conforming to the accepted code of ethics under your supervision?

MR. FABRICIOUS: We thought there were, yes.

MR. WALTON: Who did you think they were?

MR. FABRICIOUS: That had not yet been ascertained. Had we known exactly who we thought were doing that we would have taken them individually and not brought [157] it before the entire group.

MR. WALTON: Thought were doing what?

MR. FABRICIOUS: Were carrying on unethical conduct.

MR. WALTON: You say you thought that there were some who were doing unethical things?

MR. FABRICIOUS: We felt that they were, yes. In fact the Board themselves felt that they were. I follow instructions there from the Board.

MR. WALTON: But the Board didn't know who they were. Is that correct?

MR. FABRICIOUS: As far as my knowledge of what the Board knew, I cannot answer for that.

MR. WALTON: But they didn't tell you anyhow, who they were?

MR. FABRICIOUS: No, they did not.

MR. WALTON: Did they tell you what the unethical conduct was?

MR. FABRICIOUS: Oh, I can't recall on that.

MR. WALTON: Was there any unethical conduct being engaged by anyone at that time of the year?

MR. FABRICIOUS: Certainly, they must have felt there

was or they would never have given me such instructions.

MR. WALTON: You discussed it with them, didn't you?

MR. FABRICIOUS: That's right.

MR. WALTON: They didn't tell you what the unethical conduct was?

MR. FABRICIOUS: I don't recall the exact words of the discussion, no.

MR. WALTON: But just generally, do you remember what the unethical conduct was?

MR. FABRICIOUS: Well, they felt, I believe, a part of it was resistance against the rules and regulations that had been set up.

MR. WALTON: What sort of rules and regulations?

MR. FABRICIOUS: Well, the rules and regulations that came out in the matter of policy.

MR. WALTON: Which ones were those?

(Mr. Fabricious: following only mumbled.)

MR. WALTON: So there was resistance to this Exhibit 12 as early as January 1959?

MR. FABRICIOUS: Oh, I believe there was, yes.

MR. WALTON: And you don't remember who resisted it?

[158] MR. FABRICIOUS: Well, I do recall that there were some of them that came to me and asked about this matter of having to go to school, yes.

MR. WALTON: Some of the teachers didn't want to go to school in the morning, is that?

MR. FABRICIOUS: No, they didn't want to go out for additional training.

MR. WALTON: And that is the conduct you were referring to?

MR. FABRICIOUS: Not - that was a part of it - that's one thing I do recall.

MR. WALTON: Is that the worst thing?

MR. FABRICIOUS: I would say that I wouldn't know what would be considered the worst - no.

MR. WALTON: Which portion of conduct sticks out most clearly in your memory?

MR. FABRICIOUS: Well, there was considerable discussion amongst teachers over there in the matter of Mr. Condor and his resignation. There was considerable talk regarding Jesse Moore and the position of janitor. And we felt for one thing, in fact my own feeling in it was that the relationship between the Superintendent and the Janitor, or the Board and the janitor was not something that the teachers had anything to do with.

MR. WALTON: Was there any other element of this unethical conduct that you can recall.

MR. FABRICIOUS: I don't recall.

MR. WALTON: But it was serious enough, wasn't it, to call a faculty meeting?

MR. FABRICIOUS: Well, we called it, didn't we.

MR. WALTON: And you really believe, sir, that it was unethical for those teachers to discuss Jesse Moore's problems, and Joe Condor's problems, and the request for extension of time to fill credit requirements - is that unethical conduct?

MR. FABRICIOUS: May I explain please - we did have one teacher there in the system at that time who was doing considerable running from one room to another, making comments to one teacher or another, and creating considerable turmoil as a result of it.

MR. WALTON: Who was that?

MR. FABRICIOUS: A Mrs. Svedlund - was one - whether there were others I'm not—

MR. WALTON: And her unethical conduct consisted of what - going from one teacher's room to another?

MR. FABRICIOUS: Not merely going from one room to another but carrying tales from one room to another, yes.

MR. WALTON: And how did you correct that problem?

[159] MR. FABRICIOUS: There was no correction made of it other than this was the first attempt to bring to their attention what we felt was unethical conduct.

MR. WALTON: Was there any other unethical conduct referred to here or in your contemplation when you discussed this matter with the Faculty?

MR. FABRICIOUS: I believe that's considered the most of it - the running from room to room and the talk to stir up discontent among the teachers.

MR. WALTON: Who did that?

MR. FABRICIOUS: I just got through telling you.

MR. WALTON: Just Mrs. Svedlund?

MR. FABRICIOUS: No, probably she was not the only one.

MR. WALTON: Who were the others?

MR. FABRICIOUS: To name them out by name, I can't say that I can do that.

MR. WALTON: Why didn't you just call the individuals in your office and have a friendly talk with them?

MR. FABRICIOUS: I was obeying instructions from the Board.

MR. WALTON: I see - do you know why the Board felt that this was so important to call a faculty meeting?

MR. FABRICIOUS: The Board may have heard many things that I wasn't informed about.

MR. WALTON: And they didn't tell you about it, did they?

MR. FABRICIOUS: I don't recall.

MR. WALTON: Was it, in your opinion, sir, unethical for some of the teachers to discuss Jesse Moore's problem?

MR. FABRICIOUS: Not to discuss it necessarily, no.

MR. WALTON: Was it unethical for some of the teachers to discuss Joe Condor's problem?

MR. FABRICIOUS: Not to discuss his problem, no.

MR. WALTON: What was it that the teachers did with respect to those two persons, which was unethical?

MR. FABRICIOUS: Well, as far as Jesse Moore, for teachers to bandy and carry statements out, as it appeared that they were doing, to the community regarding this, and to apparently be taking sides on some of these issues, I would consider it out of line, yes.

MR. WALTON: Taking sides against the administration?

MR. FABRICIOUS: Oh, not necessarily.

[160] MR. WALTON: Well, were they in fact, taking

sides against your position with respect to Moore and Condor?

MR. FABRICIOUS: I don't know.

MR. WALTON: And that, sir, is unethical conduct that justifies firing teachers, sir?

MR. FABRICIOUS: I didn't say anybody was fired on this.

MR. WALTON: Oh, I'm asking though.

MR. FABRICIOUS: If it was carried far enough, I would say yes.

MR. WALTON: Did they carry it far enough?

MR. FABRICIOUS: I can't answer that.

MR. WALTON: Mrs. Svedlund also was a member of the AFT when it adopted the resolution to circulate a petition for recall, was she not?

MR. FABRICIOUS: I don't know.

MR. WALTON: Haven't you ever been so advised?

MR. FABRICIOUS: No.

MR. WALTON: Had you been so advised, would it in you opinion, have been a good thing to terminate her?

MR. FABRICIOUS: Because she was a member of the AFT?

MR. WALTON: Because she was a member of the AFT at the time when it sanctioned circulating petition for recall and because she had as you say, spread tales from room to room?

MR. FABRICIOUS: If spreading tales would create enough furor in the school, I would feel that was a good reason for removing her, yes.

MR. WALTON: But had you realized that Mrs. Svedlund in fact had been a member of AFT at that time, would you in your mind, felt that she should be non-retained for unethical conduct?

MR. FABRICIOUS: You're taking a hypothetical case?

MR. WALTON: Yes.

MR. FABRICIOUS: And if she was, if she actively took part in going for a recall of the School Board, I would consider it unethical, yes.

MR. WALTON: And it would justify non-retention?

MR. FABRICIOUS: In my opinion, yes.

[161] MR. WALTON: I believe you have read some of the minutes of the AFT meetings which indicate that some teachers who are still employed by your system.

MR. FABRICIOUS: I have never read any of their minutes.

MR. WALTON: Haven't you been presented with one yesterday?

MR. FABRICIOUS: No, I was not presented with one.

MR. WALTON: You didn't look at one yesterday?

MR. FABRICIOUS: I did not.

MR. WALTON: Well, if you were to learn that some of your present teachers were members of the AFT at that time, would you believe that they should be non-retained for unethical conduct?

MR. FABRICIOUS: I believe this - that if something comes up, that we can have a very few who stir up furor and get a thing started and you have a good many who go along, not really being definitely for the move and in the manner of sort of following the crowd they believe these things and wish afterwards that they had not.

MR. WALTON: I see. If a man is repentant, then he is no longer unethical, is that it?

MR. FABRICIOUS: If his repentance—

MR. WALTON: His prior conduct all of a sudden becomes ethical?

MR. FABRICIOUS: I wouldn't say the matter of repentance would necessarily make him no longer unethical - unethical, the matter of ethics is a matter of conduct, too.

MR. WALTON: Well, why is it sir, that Mr. Watts and Mr. Blue, of all the AFT members, were non-retained for unethical conduct engaged in by them as AFT members.

MR. FABRICIOUS: Let me correct you, just a moment here. Mr. Watts and Mr. Blue's non-retention had nothing to do with the AFT and was never considered in that light by the School Board or by myself.

MR. WALTON: Isn't it true that they were non-retained

for the very activities that they have testified that they did on behalf of AFT?

MR. FABRICIOUS: They are hiding it under the guise of AFT, yes.

MR. WALTON: But they did do it on behalf of and pursuant to AFT's action, didn't they?

MR. FABRICIOUS: And that's how they expect to escape the responsibility for their acts, yes.

[162] MR. WALTON: Now, Mr. Fabricious, no one is trying to escape responsibility. You have heard Mr. Watts testify he is perfectly willing to assume responsibility for his acts and he is responsible for his acts and I don't want to argue that with you. So, kindly, just answer this question - the acts which they undertook in pursuant to AFT's functions, were they unethical acts?

MR. FABRICIOUS: As acts, yes.

MR. WALTON: Why is it that they, as opposed to members of the same organization, were non-retained?

MR. FABRICIOUS: Because I believe in my opinion they did not desist from continuing these acts as other members did.

MR. WALTON: I see - so that actually it really wasn't the circulating of the petition - it was the circulation of the petition, and the failure to desist, which constituted the unethical conduct, warranting their non-retention, right?

MR. FABRICIOUS: I believe it was the culmination of all.

MR. WALTON: I see - so in and of itself that there was nothing warranting non-retention just by circulating a petition for recall, was there?

MR. FABRICIOUS: I would say so, yes.

MR. WALTON: Is there anything in and of itself, wrong with circulating the open letter, which by itself justifies non-retention?

MR. FABRICIOUS: I believe there was, yes.

MR. WALTON: What about the other members of the AFT at that time who approved of the contract, why were not they non-retained?

MR. FABRICIOUS: You better ask the Board that question. I don't have the say on the retention of teachers.

MR. WALTON: Do you feel they should have been non-retained?

MR. FABRICIOUS: Not, necessarily, no. - if they desisted from the acts later.

MR. WALTON: Now, then, there again, just like the petition, it's not just the circulation alone, it's circulation plus the failure to desist which makes the conduct warranting non-retention.

MR. FABRICIOUS: The circulating of the letter was one act.

MR. WALTON: Yes and if they desisted it's another act, right?

MR. FABRICIOUS: And carrying the petition was another act.

MR. WALTON: Take all those three - they justify non-retention, is that your testimony?

MR. FABRICIOUS: I would say that any one of them would justify non-retention under certain circumstances.

[163] MR. WALTON: Well, what circumstances separated Mr. Blue or Mr. Watts from the other members of the AFT?

MR. FABRICIOUS: Because they were far more instrumental in this than the other members were.

MR. WALTON: Because they were officers of the AFT?

MR. FABRICIOUS: No - because they were actively engaged in this.

MR. WALTON: Did you carefully investigate to determine whether or not they were the only AFT members?

MR. FABRICIOUS: No, I didn't.

MR. WALTON: Don't you feel you should have before you, I presume that you recommended their termination?

MR. FABRICIOUS: That's right.

MR. WALTON: And did you recommend the termination of other persons for the same conduct?

MR. FABRICIOUS: No.

MR. WALTON: Didn't you feel that such a serious

charge would warrant investigation of all the facts involved?

MR. FABRICIOUS: Will you clarify that - you mean by investigation.

MR. WALTON: I mean you certainly didn't feel that this AFT conduct was entirely and solely Mr. Watts, Mr. Blue and Mr. Swick, did you?

MR. FABRICIOUS: I felt that certainly they were the heart and soul of it, yes.

MR. WALTON: They were what?

MR. FABRICIOUS: That they were the heart and soul of the whole thing.

MR. WALTON: You thought that if you could crush the heart and soul, that would kill the union, didn't you?

MR. FABRICIOUS: No, I had no - it was not the question of union at all with me. It was the question of them as individuals.

MR. WALTON: I see - you felt that they were ring leaders?

MR. FABRICIOUS: To some extent, yes.

MR. WALTON: And that was why you felt that they were more apprehensible.

MR. FABRICIOUS: No, not necessarily. I felt that people that were engaged in that sort of activities and would continue with it in spite of a matter of, you might say, a notion that we knew it was happening and so on, and I felt that if they continued after that, that certainly that [164] they had had warning enough to stay out of it.

MR. WALTON: In other words -

MR. FABRICIOUS: They were offered a contract - they had a contract - immediately after their contracts were received, a lot of this word on - they were continuing to go through for a year - had they desisted from these acts they probably would still be members of this faculty.

MR. WALTON: Really.

MR. FABRICIOUS: I believe so, yes.

MR. WALTON: Had they desisted in the summer of 1959 - wouldn't that have been too late then?

MR. FABRICIOUS: They were carried on for a year following that - don't forget that?

MR. WALTON: Then they - well, I mean to say had they desisted in the summer of '59 from pursuing this matter - do you feel they would still be members of this faculty?

MR. FABRICIOUS: If they complied with other regulations, I believe they would have, yes.

MR. WALTON: Then it must be that their non-rention can be explained on the basis of other things since the summer of '59?

MR. FABRICIOUS: Possibly.

MR. WALTON: Well, please tell me what these are.

MR. FABRICIOUS: Well, they continued the fight, did they not?

MR. WALTON: Oh. Because they hired attorneys?

MR. FABRICIOUS: Oh, no.

MR. WALTON: Well, how else did they continue to fight?

MR. FABRICIOUS: Well, that would be one act of it, yes.

MR. WALTON: In what other way did they continue to fight it besides hiring attorneys?

MR. FABRICIOUS: Oh, they continued to put out information whenever they could. I happened to know that Mr. Watts spent a good bit of time running from room to room trying to plead their case, individual to individual. I talked to a number of people from the University this summer, Mr. Watts with any group that he could get together would continue to go on with a dissertation of his wrongs; how he had been wronged in the community. I felt that was certainly continuance.

MR. WALTON: And these people all told you that?

MR. FABRICIOUS: A number of people, yes.

MR. WALTON: Let's have their names, please?

[165] MR. FABRICIOUS: One of them happens to be Lyman Allen.

MR. WALTON: Lyman Allen?

MR. FABRICIOUS: Lyman Allen, yes.

MR. WALTON: Does the Board know about Lyman Allen's statements to you?

MR. FABRICIOUS: I don't think so.

MR WALTON: Then Lyman Allen's statements wasn't basis for non-retention?

MR. FABRICIOUS: Oh no.

MR. WALTON: Anyone else who made any statements to you about their conduct subsequent to the summer of 1959?

MR. FABRICIOUS: Subsequent? - Oh, this has been a matter of general discussion with many people you meet - it's widely known throughout the state. I will say that in our recent Superintendent's meeting it received considerable attention down here.

MR. WALTON: Where was that?

MR. FABRICIOUS: Juneau.

MR. WALTON: When?

MR. FABRICIOUS: Oh what was the dates on that? - October - 12, 13 & 14.

MR. WALTON: This year?

MR. FABRICIOUS: Yes.

MR. WALTON: The reason I am asking this is because under the statute these teachers have the right to know why they were non-retained and I take it from your testimony, Mr. Fabricious, please correct me if I'm wrong. I take it from your testimony that the reason they were non-retained is, in part, because they didn't desist after the summer of '59? Is that correct?

MR. FABRICIOUS: Well, that would be part of it - after all, what reasons I give for non-retention are not necessarily the reasons that might be advanced by members of the Board. I can have my own opinion - you're getting my opinions - you're not getting the Board's because I can't speak for the Board as individuals.

MR WALTON: Only for yourself.

MR. FABRICIOUS: That's right.

MR. WALTON: Your opinion is that failure to desist from this pursuit after the summer of '59 is part of the the reason why the Board terminated these men?

MR. FABRICIOUS: I wouldn't know on that.

[166] MR. WALTON: You haven't discussed it with them?

MR. FABRICIOUS: Not necessarily discussed it with them.

MR. WALTON: You haven't?

MR. FABRICIOUS: It's been discussed, but as to what extent, or if it's a matter of they desist or what, I couldn't say on that.

MR. WALTON: In your opinion, I take it, this much is correct, that had those men desisted from their attempts to recall the School Board and so-forth after the summer of '59, then they would not have been non-retained in your opinion?

MR. FABRICIOUS: It's a possibility.

MR. WALTON: Then their prior conduct would not have been sufficiently unethical to warrant non-retention?

MR. FABRICIOUS: I didn't say - there can be a forgiveness in there too, even though you might consider their conducts unethical enough to have warranted it at the time - then they would have subsequent conduct been such and they indicated any desire to cooperate with us and go along, than I felt that the matter would have been looked at completely different.

MR. WALTON: Well, could you just try and pin down, sir, after the summer of '59, how was it that these appellants failed to cooperate, as you say, and how is it they failed to abide by regulations?

MR. FABRICIOUS: After the summer of '59 - let's see they were there in '59-60 - yes - they, as I say, had not complied with regulations - they had continued non-compliance with the Board regulations adopted by the Board.

MR. WALTON: Even after July of 1959?

MR. FABRICIOUS: Let's see - July '59 - '58-59 - what was the year - they worked '59-60 didn't they?

MR. WALTON: Yes, they did work '59-60.

MR. FABRICIOUS: Now, state your question again please.

MR. WALTON: Yes, now did they violate any regulations of the School Board after July, 1959?

MR. FABRICIOUS: I would say yes, in that they did not lodge complaints - nothing had changed as far as that is concerned.

MR. WALTON: Let's take these individually now - Mr. Blue. Can you please tell me with respect to Mr. Blue, when did he violate this Sec. 1, 7, after July of 1959?

MR. FABRICIOUS: Well, first of all,- you mean as far as the rules and regulations?

MR. WALTON: Yes.

[167] MR. FABRICIOUS: I can't say that I can state a specific instance, no. I feel that his continuance in the effort to recall of the Board was sufficient to warrant his non-retention and I don't think anything else needed to be considered - as far as this non-retention.

MR. WALTON: Other than his continued efforts in the recall election, did Mr. Blue violate any of the regulations of the School Board after July, '59?

MR. FABRICIOUS: I don't recall if he did.

MR. WALTON: The same question with respect to Mr. Watts.

MR. FABRICIOUS: All I can say is that I don't recall if he did.

MR. WALTON: But it is definite in your opinion that by continuing to push the recall election, these people were violating the rules and regulations of the Seward School Board?

MR. FABRICIOUS: I said in my opinion it warranted that they not be retained on the school.

MR. WALTON: On what reason - immoral conduct or violations of regulations?

MR. FABRICIOUS: I would say immoral conduct.

MR. WALTON: Would it in your opinion have been a violation of regulations?

MR. FABRICIOUS: No, because they have already violated the regulations by not coming through with the grievances prior to starting the petition.

MR. WALTON: Please try and answer the question. Did their continued efforts in the recall election after July 1959

constitute in of itself a violation of the regulations of the Seward School Board.

MR. FABRICIOUS: I don't believe so, no.

MR. WALTON: Then, in what respect did they violate the regulations after the summer of 59?

MR. FABRICIOUS: Specifically, I can't say.

MR. WALTON: Are you then prepared to testify that you don't know of any instances following the summer of '59 when they did violate the regulation?

MR. FABRICIOUS: I would testify to that - I don't know of any specific violations in their case.

MR. WALTON: I believe you testified yesterday - I'm sorry - I believe you advised me personally yesterday that Exhibit 5 first came into your hands - that's the Miller letter - first came into your hands on the night of our first hearing, April 8, 1960.

MR. FABRICIOUS: It didn't come into my hands at all - it came into the hands of the Board.

MR. WALTON: On that day?

[168] MR. FABRICIOUS: I believe so.

MR. WALTON: Do you know how they came into its possession?

MR. FABRICIOUS: I'm not so sure I know - I didn't see it delivered.

MR. WALTON: Had you ever seen it before then?

MR. FABRICIOUS: No.

MR. WALTON: Have you ever discussed that letter with the Board before then?

MR. FABRICIOUS: No.

MR. WALTON: Was it solicited?

MR. FABRICIOUS: Not to my knowledge, it was not.

MR. WALTON: It was volunteered?

MR. FABRICIOUS: As far as I know.

MR. WALTON: Sir, do you believe that the Executive committee of the SDTA, or the members representing it, violated the same regulations when it first approached the Board with respect to non-retention of those four teachers?

MR. FABRICIOUS: Well I believe they - I recall testi-

mony which shows that they sent me a letter at the same time.

MR. WALTON: Is that what E7 provides for?

MR. FABRICIOUS: Well, that would be one way of providing for it.

MR. WALTON: Doesn't it say that all grievances shall be submitted to the Board through the Superintendent?

MR. FABRICIOUS: I believe if you go further along you will see that they may at the same time be sent to members of the Board.

MR. WALTON: Was the communication of the SDTA addressed to you, sir, or to the Board?

MR. FABRICIOUS: I don't recall - I believe there was one addressed to me and another addressed to the Board. I can't be certain of that.

MR. WALTON: To refresh your recollection. Sub-paragraph 9 provides that. Employees, or groups of employees desiring to address the Board shall address their communication to the Superintendent except copies may be sent to Board members. Does that mean sir, and I ask you because you originated this regulation, does that mean, it is a violation of this regulation for a person to send a letter to the Board and a copy to you, but it isn't a violation to send a letter to you and a copy to the Board?

[169] MR. FABRICIOUS: Well, it's probably my own personal view of it, if we both received copies of it, there would be no violation.

MR. WALTON: It doesn't matter so much who it's addressed to, if you both hear about it at the same time, is that it?

MR. FABRICIOUS: Well, if it's addressed to me and I had a copy and they have a copy, I would see no point of arguing over that.

MR. WALTON: Over whom it's addressed to?

MR. FABRICIOUS: That's right.

MR. WALTON: With respect to these Appellants, did they ever advise the Board of any complaints before they advised you?

MR. FABRICIOUS: I don't know that they have.

MR. WALTON: And if they didn't they didn't violate the regulations, did they?

MR. FABRICIOUS: You mean if they - say it again?

MR. WALTON: Well, sub-paragraph 9 indicates it's not a violation of the regulations to submit communications to both you and the Board simultaneously, does it not?

MR. FABRICIOUS: That's right. That would be my interpretation of it - others might possibly interpret it a little differently - I couldn't say.

MR. WALTON: As far as you are concerned if a communications is addressed to you and the Board simultaneously, there is no violation of regulations?

MR. FABRICIOUS: That would be my interpretation of it.

MR. WALTON: Very well. Now in the case of Appellants Blue and Watts, did they ever communicate to the Board at anytime without at the same time, previously communicating to you?

MR. FABRICIOUS: I don't recall that they did, no.

MR. WALTON: Then do you recall any instances when they violated the regulations, sir?

MR. FABRICIOUS: In fact, I have never received any correspondence from them, so I would not be in a position to state.

MR. WALTON: So you could not testify that they have violated the regulations, could you?

MR. FABRICIOUS: Not that specific violation. I couldn't testify that they had, no.

MR. WALTON: Let's take the other regulations - assuming this is a regulation of the Board. Sub-paragraph 7 - that states that grievances, compliants, and communications shall be submitted to the Board through the Superintendent, do I understand you to state that in your opinion, as the one who drafted this regulation, that paragraph is qualified by paragraph 9, which says it's ok to do it to the Board simultaneously?

[170] MR. FABRICIOUS: Well, if you go back to the

other paragraph, it states there, it's stated in there - my interpretation of it would be that it should be to the Superintendent, but it doesn't prevent you from at the same time sending it to the Board.

MR. WALTON: Oh, I see. So, actually, 7 doesn't really mean what it says, does it?

MR. FABRICIOUS: May I read it?

MR. WALTON: Yes - 7 - Perhaps we could give Mr. Fabricious a copy of this?

MR. FABRICIOUS: Yes, it states grievances, communications, complaints shall be submitted to the Board through the Superintendent, all right.

MR. WALTON: Now, I asked you earlier whether or not the Executive Committee of the SDTA violated any regulations when they went to the Board first, and you stated, no, because paragraph 9 explains 7, it says they can do it if they do it simultaneously to both the Board and the Superintendent - is that your testimony?

MR. FABRICIOUS: The Board might interpret that different than I do. They are the ones to decide.

MR. WALTON: As far as you're concerned, paragraph 7 is qualified by paragraph 9.

MR. FABRICIOUS: I would say that 7 should certainly take precedence.

MR. WALTON: Oh, then it is a violation for an employee to submit a communication to the Board and simultaneously send a copy to the Superintendent? Even though mine appears to say you can do it?

MR FABRICIOUS: I have never been put in a position to have to interpret this and decide on it, I would say that we would have to go specifically by this even though my former statement might have indicated differently.

MR. WALTON: When you say we should go specifically by this, what do you mean?

MR. FABRICIOUS: I would say start with number 7.

MR. WALTON: In other words, 7 does take precedence?

MR. FABRICIOUS: I would say so, yes.

MR. WALTON: And you're the one who drafted these regulations?

MR. FABRICIOUS: That's right. It has never been to my personal attention that it needed to be acted upon.

MR. WALTON: Well, that's the purpose of this hearing. Now, and I presume you have thought about this before, have you?

MR. FABRICIOUS: Not specifically, no.

[171] MR. WALTON: Then, I take it that the SDTA Executive Committee did violate a regulation when it communicated to the Board without previously going through you?

MR. FABRICIOUS: According to this, that appears to be the case.

MR. WALTON: And the members of that committee must have been guilty of unethical conduct, in your opinion, correct?

MR. FABRICIOUS: If you want to interpret it that way, yes.

MR. WALTON: Do you interpret that violations of regulations to be unethical conduct? Do you sir?

MR. FABRICIOUS: Violations of regulations to be unethical? I would say that inasmuch as teacher in signing their contract agrees to bide by the rules and regulations of the Seward School Board, then you would have to class it as unethical, yes.

MR. WALTON: So, I take it the Executive Committee was unethical?

MR. FABRICIOUS: If that's the interpretation that must be taken, yes.

MR. WALTON: Well, that is your interpretation?

MR. FABRICIOUS: My interpretation would have to be in accordance with this, yes - we're not citing any specific instances.

MR. WALTON: Well, let's take a specific instance in which the SDTA sent the Executive Committee to the Board. Do you know who the members of that committee were?

MR. FABRICIOUS: As far as my recollection, no - I don't recall that the Executive committee ever went to the Board when I was not present.

MR. WALTON: They addressed a communication to the Board, did they not?

MR. FABRICIOUS: They may have, I don't know - I don't recall any communication.

MR. WALTON: They didn't submit all their communication through you, did they?

MR. FABRICIOUS: I don't recall - I didn't bring myself up in this in anticipation to answer each questions.

MR. WALTON: Mr. Fabricious, I'm going to try and ask you if you remember the names of the persons who were on the Executive Committee and I ask you were they not, Swick, Watts, Copeland and Winninghoff?

MR. FABRICIOUS: I don't know - there were more than one group and I don't recall specifically - I couldn't specifically separate the groups. I recalled that Copeland, Winninghoff were there.

MR. WALTON: And Watts and Swick?

MR. FABRICIOUS: I remember Swick, but I don't recall whether Watts was or not.

[172] MR. WALTON: Watts has testified today that he was also a member of the committee.

MR. FABRICIOUS: Well, it's alright, then.

MR. WALTON: And there were four members, whose identity we now know, correct?

MR. FABRICIOUS: According to that, yes.

MR. WALTON: And I take it that all four of those members were therefore guilty of unethical conduct?

MR. FABRICIOUS: In that they—

MR. WALTON: In that they contacted the Board directly regards to the illegal non-retention of certain teachers without first going through you?

MR. FABRICIOUS: Well, I would consider it slightly different in that I was with the Board at the time of this meeting.

MR. WALTON: I thought you said that number 7 requires them to go through you, not to both simultaneously, sir?

MR. FABRICIOUS: The requirement does say that, but

in my own feeling about it and I believe that does enter in. the fact that I was there at the time of the meeting, would be something, I would say, of an extenuating circumstances.

MR. WALTON: I see, so that paragraph 7 doesn't mean what it appears to say after all?

MR. BURR: I'm going to object to arguing with the witness as to what this means or doesn't mean - this is to look at the facts, not to get legal opinions from the witness as to what the effect is, I think that's for the appellant more to say - I'll object to the line of questioning.

MR. WALTON: And if I may be heard on that, your Honor, or Mr. Chairman. I'm only interrogating the very author of the regulation in question. He himself has changed his opinion not less than three times upon interrogating.

MR. BURR: Started to interrupt - couldn't get his words and then

MR. WALTON: And I expect the chairman to permit me to finish. Certainly, the author would know what the extent of the regulation is. If these persons jobs are at stake, and if their jobs hinged upon interpretation of the regulation, certainly we are entitled to inquire as to what it's meaning is. I can't think of a better source than the author himself. Ambiguous and equivocal though his interpretations might be.

MR. BURR: Unfortunately you're not running the Appellant proceedings, so we'll have to continue.

MR. WALTON: And I'm sure the Board wants all the facts it can get before the State Department of Education.

CHAIRMAN CASEY: Objection overruled - before you go ahead, I would like to say something, Mr. Walton. The feeling of the Board that we won't go past 5 o'clock, apparently this is going to go on for 2 or 3 days, the way it is going now and we will adjourn at 5 o'clock and come back at 8 o'clock. You can finish with Mr. Fabricious if it should go past 5, 15 minutes or so.

[173] MR. WALTON: I see, thank you. I'll advise the chair.

MR. CASEY: Alright, thank you, if you will. Proceed Mr. Walton.

MR. WALTON: Now, Mr. Fabricious, perhaps now you can tell us as the author of this regulation, assuming it is a regulation, does 7 take precedence over 9, or does it take precedance over 7. Which is it? Is it? Is it unethical to go to the Board without first going to the Superintendent, or is it unethical - or is it ethical to do so? In your opinion, as the author of this regulation?

MR. FABRICIOUS: I would consider inasmuch as the regulation is couched in such terms, that it should go to the Superintendent first, but I don't believe that any regulations should be made without they could not be sanctions without a certain relaxing of it, for instances as I may, to mean before - a notification of a personal appearance of a group before the Board in which I was present, I personally would not feel that that had been a violation - it would not be very severe now, that's a personal opinion of mine sir, and I'm not speaking for the Board or anyone else's interpretation of this.

MR. WALTON: I appreciate that. In other words, your personal opinion is that regulations are not necessarily to be obeyed?

MR. FABRICIOUS: I didn't say that. I didn't say that - I didn't say that at all.

MR. WALTON: Isn't it your opinion that regulations can be disregarded on occasions?

MR. FABRICIOUS; I believe that we have to be human.

MR. WALTON: Regulations can be disregarded on occasions?

MR. FABRICIOUS: I didn't say disregarded, no.

MR. WALTON: Well, what – I'm sorry, I don't understand you. What were you saying?

MR. FABRICIOUS: I fail to understand you too, now.

MR. WALTON: Well, will you please explain to me is it your opinion that if paragraph 7 is a regulation, that it need not be applied in every instance in which it appears to be applicable?

MR. FABRICIOUS: I would say as I have stated before, if there was a complaint, and if it came before the Board and Superintendent at once, I as an individual would not feel that there had been enough of a violation of the regulations here to make it of any real importance.

MR. WALTON: Very well. Now, what if the complaint is in the form of a document, and if the Superintendent is in one end of the hall, and the Board is at the other end, and you both get the document at the same time, would that constitute a violation of paragraph 7?

MR. FABRICIOUS: I would say that a personal appearance of the persons would be considerably different than a document.

MR. WALTON: So it would be a violation of regulatons if both parties got a [174] document at the same time but it wouldn't if they were both in the same room at the same time, is that it?

MR. FABRICIOUS: I can't see how they could both get a document at the same time.

MR. WALTON: They might both get a copy of a letter?

MR. FABRICIOUS: They might.

MR. WALTON: They might get a mimeographed copy of an open letter.

MR. FABRICIOUS: They might.

MR. WALTON: Would that be a violation of the regulations?

MR. FABRICIOUS: A ~~memeographed~~ copy of the open letter?

MR. WALTON: Received simultaneously in different geographic locations?

MR. FABRICIOUS: Well, it would be hard to prove that they both got it simultaneously, in fact, the open letter, I wouldn't say - I wouldn't class it as a communication.

MR. WALTON: It's a grievance, isn't it?

MR. FABRICIOUS: I wouldn't class it as a communication to me as Superintendent - an open letter sent through the mails such as now here, I wouldn't call that a communication, at all.

MR. WALTON: It was handed to you, wasn't it?

MR. FABRICIOUS: No, it was not.

MR. WALTON: Wasn't it handed to you by Mr. Watts?

MR. FABRICIOUS: If Mr. Watts said that he is not telling the truth - he never did hand me one personally.

MR WALTON: In the presence of Mr. Frampton?

MR. FABRICIOUS: No, not to my knowledge, he didn't.

MR. WALTON: It's possible, isn't it?

MR. FABRICIOUS: Well, anything is possible, yes.

MR. WALTON: And therefore if he testified thusly, it would not necessarily be false, would it?

MR. FABRICIOUS: Not necessarily, no.

MR. WALTON: You wouldn't be prepared to say he was committing perjury, would you?

MR. FABRICIOUS: I would be prepared to say that I don't recall that that document was ever handed to me in the presence of Mr. Frampton.

[175] MR. WALTON: If it were handed to you and to the Board simultaneously, would it constitute a violation of this alleged regulation?

MR. FABRICIOUS: Yes, because an open letter which was sent to 500 people of the community wouldn't consider it as a communication to me.

MR. WALTON: Is there anything in this alleged regulations which prohibits a teacher from sending to members of the community at large?

MR. FABRICIOUS: I would say the matter of intent there would be something to consider - I don't think - the regulations have nothing to say about sending out to the public - it's a matter of intent and content.

MR. WALTON: In other words, there is nothing wrong, is there, with a teacher sending a copy of a communication to the public at large?

MR. FABRICIOUS: Depending on what's in the communication.

MR. WALTON: Let's take the open letter, Exhibit 7. Is the fact that was delivered to the members of the community at large a violation of any regulation?

MR. FABRICIOUS: I would say it certainly was a violation of what we consider right and wrong among any group of faculty members.

MR. WALTON: Is it a violation of any regulation of Exhibit 12?

MR. FABRICIOUS: Inasmuch as it was considered a complaint, I would say yes.

MR. WALTON: And which regulation is it a violation of, to send such a copy to members of the public at large - which regulation?

MR. FABRICIOUS: Let's take 7 - I think would cover it.

MR WALTON: All right. Does 7 state expressly that a grievance cannot be communicated to the public at large?

MR. FABRICIOUS: It doesn't say that specifically, no.

MR. WALTON: And you think it's implied in 7?

MR. FABRICIOUS: I would say that inasmuch as it was aimed at certain individuals, it would imply that, yes.

MR. WALTON: 7 would imply that?

MR. FABRICIOUS: I think so.

MR. WALTON: Thank you. I believe the chair wishes to adjourn.

CHAIRMAN CASEY: We will adjourn until 8:00 PM. (Time was 5:00 P.M.)

MR. WALTON: May we present, Mr. Chairman?

CHAIRMAN CHASEY: Yes, proceed, Mr. Walton, excuse me.

MR. WALTON: I believe Mr. Fabricious, that your last question which was posed to you, was does paragraph 7 of the supposed regulations prohibit the [176] circulation by teachers of grievances or complaints to the public at large, and if I recall your answer was "yes, it does imply", have I correctly stated your answer, sir?

MR. FABRICIOUS: I don't just recall - let's have the question again?

MR. WALTON: I asked you sir - perhaps Mr. Fabricious would like to have a copy of the regulations - supposedly regulations?

MR. BURR: Would you look at your copy and see if it's the Exhibit?

MR. WALTON: I don't know sir, perhaps you can tell me.

MR. BURR: It would be marked in the corner, if it is.

MR. FABRICIOUS: Now your question?

MR. WALTON: Yes sir, I direct your attention to the bottom of page 3, paragraph 7.

MR. FABRICIOUS: I would say that employees of the school that that would - it would be completely out of line for them to distribute to the community a bill of particulars, such as they did.

MR. WALTON: I see - even after such grievances or complaints had been submitted through a Superintendent to a School Board, would it still be improper for such teachers?

MR. FABRICIOUS: I think it would be improper to distribute it throughout a community at any time.

MR. WALTON: Do you think that's prohibited in the supposed regulations?

MR. FABRICIOUS: I'd say - I'm speaking of the regulations - I say if they're employed by a School Board that it would be improper for them to distribute such as that about the community for any motives that they might conceive from it, yes.

MR. WALTON: There is no expressed prohibition of such conduct, is there, in the regulations?

MR. FABRICIOUS: You wouldn't need to have an expressed prohibition.

MR. WALTON: I see. That's one of the regulations that you feel they are bound to guard, even though the school board doesn't adopt, is that it?

MR. FABRICIOUS: The School Board has adopted it.

MR. WALTON: A regulation prohibiting public communication by teachers of complaints?

MR. FABRICIOUS: No, I say this - I'm speaking of this - in my own mind it's adopted by the Board and I believe that's what they should go by.

MR. WALTON: Yes sir - but I say there is no expressed prohibition, is there, in any regulations against teachers communicating to the public their grievances against a school board or a superintendent?

[177] MR. FABRICIOUS: I would say that the grievances should be carried through the proper channels just as it is expressed here and no other way.

MR. WALTON: And I take it that is the best answer you can give to my question.

MR. FABRICIOUS: That is a complete answer.

MR. WALTON: Very well. As you know sir, the length of the teachers contracts which were entered into between the School Board and the Appellants?

MR. FABRICIOUS: I believe their contracts state 180 teaching days, if I'm not mistaken.

MR. WALTON: Yes sir and do you recall, or do you know on what day the 180th day falls in 1959?

MR. FABRICIOUS: Off hand, I can't say, no.

MR. WALTON: If I were to tell you it fell on May 15, 1959, would you have any room to dispute that?

MR. FABRICIOUS: I would say it would be within a few days one way or the other.

MR. WALTON: Yes, I take it that you or the Board does have possession of the contracts entered into between appellants?

MR. FABRICIOUS: Definitely.

MR. WALTON: Assuming that the contract period did end on May 15, 1959, then sir, I ask you, would the appellants be bound to observe any provision in these supposed regulations?

MR. FABRICIOUS: They would in my mind, yes.

MR. WALTON: Even though their contract period had ended?

MR. FABRICIOUS: In many respects they are trying to convey to the group that they have a continuing contract - that has been their claim. Now I'm going on an assumption, that if they had such a thing as a continuing contract then certainly the contract would have obligations on both parties.

MR. WALTON: Well, let me explain, what I think is their position. I believe you will find that their position is that their contract period is for 180 days and by virtue of the Tenure Law, they have an automatic right of renewal of the contract commencing the following fall. Now, under that assumption, sir, would they be bound by any provisions of such contract after the 180th day?

MR. FABRICIOUS: I believe that if there is anything that can be considered in any way detrimental to the school or to them as a teacher in the school, or to anyone else concerning the school, that they would be bound.

MR. WALTON: I see. And would you say that the same obligation falls upon any other citizen in the community?

[178] MR. FABRICIOUS: You mean any other citizen employed by the school? This is only as far as the teachers are concerned, we're speaking of.

MR. WALTON: And you believe that regulations in Exhibit 12 apply to teachers even in the month of August?

MR. FABRICIOUS: I definitely do, yes.

MR. WALTON: Is there anything?

MR. FABRICIOUS: I would say that it's a question of morality and I don't think a teacher, an immoral teacher during the summer has any more excuse for immorality in the summer than they have any time they are teaching. If you want to consider just the acts of immorality.

MR. WALTON: I see. Do you believe, sir, that citizens at large, the average citizen has a right to petition for the recall of a public official?

MR. FABRICIOUS: Not if that official is employed by the official group, no.

MR. WALTON: And you feel therefore that teachers do not enjoy all the rights which ordinary citizens otherwise would have with respect to School Board members?

MR. FABRICIOUS: May I make a supposition now? Let me continue the same thing in our State Government?

MR. WALTON: Perhaps you could answer the question, then you may suppose it as you wish.

MR. FABRICIOUS: All right. Let's have the question, again?

MR. WALTON: Do you believe, sir that teachers enjoy fewer rights than the average citizens to question publicly their School Board Members' policies?

MR. FABRICIOUS: Yes, I do.

MR. WALTON: Even during the summer months?

MR. FABRICIOUS: Even during the summer months, if they are continuing in employment.

MR. WALTON: After their 180 day contract has been ended?

MR. FABRICIOUS: And if they are then under contract, yes.

MR. WALTON: Will you tell me, Sir, were the appellants Blue and Watts under contract in the summer of 1959?

MR. FABRICIOUS: They were. They had contracts for the following year, yes.

MR. WALTON: And when did those contracts commence sir?

MR. FABRICIOUS: Actually, as far as the opening of school they commenced something around the first part of September, as far as teaching days is concerned.

MR. WALTON: In other words those contracts weren't applicable or effective until September, were they?

MR. FABRICIOUS: Well, let's consider another little aspect here, if those teachers had carried on acts which would have merited revocation of their certificates it wouldn't have mattered if they were during the teaching year or during the summer - the revocation of certificates could have been carried out just the same.

MR. WALTON: I don't think you understood my question -

MR. FABRICIOUS: Well, I'll give you an answer - it probably won't warrant it, but -

MR. WALTON: No, I'm very interested in your answers, but I'd like also to have the answers to my questions and my question is were the appellants under contract with the Board during the summer, I mean the month of August, 1959?

MR. FABRICIOUS: I would say they are, yes - in this respect.

MR. WALTON: May I just–

MR. BURR: I'll request that the witness be allowed to answer the question, Mr. Walton.

MR. WALTON: Very well - I–

MR. FABRICIOUS: That they hold the Board to a contract, even though they may not be actively employed, they are in a position to hold the Board irrevocably to that contract, during the period, even though they may not be actively engaged, so I feel that on the other hand there is an obligation on the part of the teacher just as well as there is on the part of the Board.

MR. WALTON: Now, the contract, in other words, under which you believe they were operating, would that be the contract which commenced in Sept. 1959, or the contract which ended in May of 1959?

MR. FABRICIOUS: I would say it would be the one coming up for the following year.

MR. WALTON: I see - you feel that the appellants were under contract to the School Board in August of 1959 by virtue of the contract which would literally be effective in Sept. of 1959?

MR. FABRICIOUS: As far as working time is concerned.

MR. WALTON: Yes, would that also

MR. FABRICIOUS: As far as their actions that might merit invalidation of contract I would say, that the summer months wouldn't make any difference.

MR. WALTON: Did I understand you sir, to say that the teachers do have contractual obligations for the month of August by virtue of their contracts which literally commence in the month of September?

MR. FABRICIOUS: By contractual obligation - will you explain what you mean by contractual obligations?

MR. WALTON: I am referring to the obligations which are contained in their contracts with the School Board.

[180] MR. FABRICIOUS: In a sense I feel that they as teachers, even as I said in the summer months, have an

obligation to conduct himself and to be citizens of such a type, that they would merit the confidence of a Board and start employment and pay when school opens.

MR. WALTON: And would this obligation follow by virtue of their contract with the School Board, or by virtue of something else?

MR. FABRICIOUS: Well, I think the fact that they were more or less continuing in employment.

MR. WALTON: And would they be continuing in employment by virtue of the contract which ended in May, 1959, or by virtue of the one which commenced in September of 1959? Which one?

MR. FABRICIOUS: Well, I would say that occurrence, because if they had not wished to remain in contract, they would have had to sever their obligations or responsibilities to the District.

MR. WALTON: All right, I take it then, that we agree that the duties, the contractual duties of teachers in the month of August, are those which are set forth in the contract which commenced in the following September, is that correct?

MR. BURR: I am going to object to the question on the grounds of calling for a legal conclusion which the witness is not qualified to answer.

MR. WALTON: I believe we must ask to replace the tape at this time. Mr. Chairman, Mr. Burr has made an objection, if I may be heard on the objection, I would reply that Mr. Fabricious has testifed that these teachers were, in his opinion, immoral by virtue of violation of some duty and all I'm trying to inquire now is to find out exactly what that duty is which he says they have violated. And I think I'm entitled to ask him. Where did the duty arise which those teachers allegedly violated, and that's all I'm trying to do, and I have nothing further to say on that objection.

CHAIRMAN CASEY: You would like a ruling on that, Mr. Walton?

MR. WALTON: If you please.

CHAIRMAN CASEY: I will sustain the motion.

MR. WALTON: Mr. Fabricious, did I understand you to testify that you never communicate with other school administrators concerning your employees, unless your communication is solicited?

MR. FABRICIOUS: I wouldn't say, never, no. But generally, that's the way it is handled among administrators, but there are times when you may for various reasons communicate with them regarding their or one of your own.

MR. WALTON: I see. I believe that you testified, sir, that you communicated with the School Board or the School Administrator in Saldovia with respect to Mr. Swick.

[181]

Mr. Fabricius: That's right.

Mr. Walton: Could I inquire, sir, when that communication was made.

Mr. Fabricius: Oh, I don't recall - might have been, it might have been June, I don't recall exactly.

Mr. Walton: Well, now, Mr. Swick's position had been declared vacant in May of 1959, had it not?

Mr. Fabricius: I believe, so yes.

Mr. Walton: And was your inquiry to the Seldovia Board subsequent to that announcement?

Mr. Fabricius: I think so.

Mr. Walton: Could I ask sir, why you inquired of the Seldovia School Board concerning Mr. Swick?

Mr. Fabricius: I don't mind telling you what I wrote to them.

Mr. Walton: Please do.

Mr. Fabricius: I wrote to them and I told them that I understood Mr. Swick wrote the city for employment there, and that I had nothing to state regarding his character or anything of that sort, but I thought that they should investigate his activities in previous schools before employing him.

Mr. Walton: I see. Did anyone ask you to write that letter?

Mr. Fabricius: I don't think they did.

Mr. Walton: The School Board?

Mr. Fabricius: I communicated with, not Mr. Poland but somebody from Seldovia who had indicated that Mr. Swick was interested down there.

Mr. Walton: Did anybody from the Seward School Board ask you to write such a letter?

Mr. Fabricius: No.

Mr. Walton: Mr. Swick?

Mr. Fabricius: No.

Mr. Walton: Did anyone from Seldovia ask you for such an inquiry?

Mr. Fabricius: I don't think so.

Mr. Walton: You just voluntarily communicated to Seldovia this thought about Mr. Swick?

Mr. Fabricius: That's right, I did.

[182] Mr. Walton: Now, why did you do that?

Mr. Fabricius: Because I felt that if a teacher in a system was giving that system trouble then any other systems should make their investigation on it and not get in the same fix.

Mr. Walton: I see. And do you undertake such voluntary assistance to other school superintendents?

Mr. Fabricius: Yes, and I would certainly appreciate it if they would do the same.

Mr. Walton: And do you do that by virtue of any regulation, sir, adopted by this School Board?

Mr. Fabricius: Oh, no.

Mr. Walton: That's a self-assumed authority?

Mr. Fabricius: I don't know if you could say it's a self assumed authority. Let's say it's considered a good practice among administrators when teachers are moving about, to let them know about them.

Mr. Walton: Is that a practice that you follow, sir?

Mr. Fabricius: To some extent, yes.

Mr. Walton: And did you follow that practice with respect to the appellants?

Mr. Fabricius: Both of them?

Mr. Walton: Any of them.

Mr. Fabricius: Mr. Swick is the only one I've ever mentioned to anyone.

Mr. Walton: What about Mr. Joe Condor?

Mr. Fabricius: I've never written a word about Joe Condor.

Mr. Walton: Isn't this sort of thing in a profession known as blacklisting?

Mr. Fabricius: No, it is not.

Mr. Walton: What does blacklisting mean?

Mr. Fabricius: Well, blacklisting would be to advise them not to employ.

Mr. Walton: And you don't think that your letter, in effect, was an admonishment not to employ Mr. Swick?

Mr. Fabricius: I don't consider it so.

Mr. Walton: Don't you think it might have been so understood by the persons who read it?

Mr. Fabricius: That's entirely up to them as to how they might understand it.

[183] Mr. Walton: For all practical purposes it might very well have the effect of being black-listing, might it not?

Mr. Fabricius: That would depend on the interpretation.

Mr. Walton: Mr. Fabricius, isn't it possible that it was this very sort of practice which originally created so much conflict between you and the school teachers in this system?

Mr. Fabricius: No, I don't think so at all.

Mr. Walton: I believe earlier in your testimony that you stated the Jan. 1959 faculty meeting was prompted by some trouble that had been had by the administration and the school board with various teachers?

Mr. Fabricius: More or less rumored trouble - let's put it that way.

Mr. Walton: Did you sir, in response to a subpoena earlier served you on you, bring with you the minutes of the Seward School Board meetings from January 1, 1959 to date?

Mr. Fabricius: Yes.

Mr. Walton: Can you furnish the Board with the minutes of the Jan. 13, 1959 regular school board meeting? While the chairman is looking for those minutes, may I ask one further question? Did you also bring with you the personal file of Mr. Swick?

Mr. Fabricius: Yes.

Mr. Walton: Does that file contain a copy of your letter to the Seldovia School Board?

Mr. Fabricius: No.

Mr. Walton: Where is the copy of that letter?

Mr. Fabricius: I haven't the slightest idea.

Mr. Walton: Isn't it customary for you to keep copies of letters that you write to administrators in the course of your duties?

Mr. Fabricius: Some of them, some of them not.

Mr. Walton: Well, this was written in the course of your business as school administrator, wasn't it?

Mr. Fabricius: You might consider it so.

Mr. Walton: Well, would you consider it so?

Mr. Fabricius: You mean as far as administrative duties? I thought it was a personal - not necessarily administrative duties, I feel that [184] superintendents throughout the country -throughout the states should keep each other informed - not as a matter of administrative duties but as a matter of what we feel - information that should be available to us.

Mr. Walton: By virtue of their positions as superintendents.

Mr. Fabricius: . . Because I feel that any teacher coming to me, that if administrators would give me their . . a little background on them, it would be very helpful. I felt that, had the Skagway School Board in the first place, given full information here, there might have been a completely different picture.

Mr. Walton: Were there copies of that letter, sir, when it was originally typed?

Mr. Fabricius: Was there a copy?

Mr. Walton: Uh huh.

Mr. Fabricius: I presume there was.

Mr. Walton: And you don't know what happened to it?

Mr. Fabricius: No. There are many letters I write that I don't keep a copy. You see in writing letters like that, I don't anticipate having to come into something like this.

Mr. Walton: Yes. It's sometimes helpful not to have a copy of such a letter?

Mr. Fabricius: You might, if you wish to construe it that way, but certainly that was not the intent.

Mr. Walton: I didn't mean to put words in your mouth. Have the minutes been located?

Mr. Burr: The Hell you didn't!

Mr. Casey: Yes, Mr. Walton, I have been trying to find a clip.

Mr. Walton: Thank you, I'll wait. Now, Mr. Fabricius, earlier this evening you couldn't remember the names of the teachers whom you considered such troublemakers in 1959. I direct your attention to page 2 of the minutes of the school board meeting of January 13, 1959 and I will read, quote, "Mr. Fabricius and Mr. Casey said that a great deal of the trouble being caused was by gossip in the grade school, that Mrs. Svedlund, Mrs. Hollenbeck, Mr. Richardson and Mrs. Copeland were the worst troublemakers." Does that portion of the minutes correctly reflect what you stated?

Mr. Fabricius: It reflected our feeling at that time but it didn't reflect what we found to be fact later on. In fact, two of these people - I would say that three of them here we could take off of that list after we . . . . that situation. That was Mrs. Hollenbeck, Mr. Richardson and Mrs. Copeland.

Mr. Walton: Why did you, apparently on that occasion, - may I request that these be marked appellants' exhibit 7, thank you sir, and be introduced in evidence? May I inquire sir, why, on that occasion you did think that these four persons were all troublemakers?

Mr. Fabricius: Well, certain amount of talk, certain amount of rumor, etc. and I believe it's certainly a possibility that people can find they've been mistaken, isn't it?

* * *

[209] MRS. HOLLENBECK: I was shocked when I heard that tonight.

MR. WALTON: Did you hear about it before tonight?

MRS. HOLLENBECK: Yes, I had heard it but it was after I had been non-retained, and I just couldn't imagine what in the world he could have said that or the Board would believe any such thing. The Board knew me pretty well, too I thought — not all the people on this Board now, but the ones that used to be here.

MR. WALTON: No further questions.

MR. BURR: No questions.

MR. WALTON: If it please the Board we would like to call Mrs. Beth Muller.

CHAIRMAN CASEY: Mr. Walton, could we have a recess — I'm going to call recess now.

MR. WALTON: Certainly.

Recessed at 9:50 p.m. — reconvened at 10:00 p.m.

MR. CASEY: The meeting will be reconvened will you proceed, Mr. Walton?

MR. WALTON: Thank you sir. Is Mrs. Beth Muller here?

Mrs. Muller, will you please raise your right hand. Do you swear the testimony you are about to give is the whole truth, and nothing but the truth, so help you God?

MRS. MULLER: I do, sir.

MR. WALTON: Will you please be seated. Please state your full name.

MRS. MULLER: Beth Ann Muller.

MR. WALTON: And where do you live?

MRS. MULLER: I live in Forest Acres — it's right out of Seward.

MR. WALTON: And how long have you lived in Seward?

MRS. MULLER: Fifteen years.

MR. WALTON: You're married?

MRS. MULLER: Yes, I am.

MR. WALTON: Do you have a family?

MRS. MULLER: I have three sons — all who have gone to school in the Seward Public School System.

MR. WALTON: Are you acquainted with Mr. Fabricius, ma'am?

MRS. MULLER: Yes, I am.

[210] MR. WALTON: Let me ask you to think back to the Fall of 1958, particularly in October — do you recall having a conversation with Mr. Fabricius in the Grade School at Seward, Alaska?

MRS. MULLER: I had a conversation with Mr. Fabricius, however, it was in the High School. It concerned my son and a son for whom I was guardian, who was going to the Grammar School. I felt that the discipline of these two boys in their classrooms was not all that it should be.

MR. WALTON: May I ask you, did this meeting arise at your request, or Mr. Fabricius?

MRS. MULLER: Oh, it came from my request because I came here to see him.

MR. WALTON: I see. And what happened during this meeting?

MRS. MULLER: I came to ask him if maybe he could go talk with the teacher or view the situation and see if the discipline in this one particular classroom could not be improved on. I had discussed it with the boys, and I had also discussed it with other mothers in that class — in fact I had discussed it with another teacher. So when I came to ask Mr. Fabricius if something could be done, he said, yes he would surely try to do something. He had not yet at this time gone over to the Grammar School, but he would plan to go within a few days.

MR. WALTON: Did anything further take place?

MRS. MULLER: At that time he told me that he knew that the situation was bad and he felt that probably the heads would roll of about 1/3 of the teachers in the school system. He knew that it would not make him popular, but he intended to do it anyway. That he had had to clean up previous school systems and he felt that he could take care of ours too.

MR. WALTON: Did he indicate — did he tell you how he had taken care of previous school systems?

MRS. MULLER: I can't remember whether he did.

MR. WALTON: But, his expression was "that the heads were going to roll"?

MRS. MULLER: That the heads were going to roll.

MR. WALTON: Did the heads roll?

MRS. MULLER: I understand that lots of heads have rolled.

MR. WALTON: No further questions.

MR. BURR: Mrs. Muller — don't rush off. Mr. Fabricius was just shortly in the system at the time that you had this conversation wasn't he?

MRS. MULLER: Yes, he was.

MR. BURR: Were you wholly and altogether satisfied with the school system before his arrival?

[211] MRS. MULLER: I had had no complaints too much — whenever I had a complaint I always managed to have it taken care of. I always was a mother who came to the school system when I wanted help.

MR. BURR: Concerning which teacher were you making inquiry?

MRS. MULLER: It was concerning Mrs. Armstrong.

MR. BURR: Did you know Mr. Blue or Mr. Watts at the time you were talking to Mr. Fabricius?

MRS. MULLER: Yes, I knew them both — my sons had both of them many times.

MR. BURR: Have you ever had occasion to visit either of these gentlemen during their teaching hours in their rooms?

MRS. MULLER: No, I never did.

MR. BURR: Then you have no opinion as to their teaching ability respectively?

MRS. MULLER: First hand knowledge, no. I have had to go by the opinions of my children about school, which was one reason why I had come to Mr. Fabricius about Mrs. Armstrong. The attitude of my children who had Mrs. Armstrong.

MR. BURR: Well, the fact that you complained about Mrs. Armstrong would indicate to me that you had some dissatisfaction with the system that Mr. Fabricius inherited when he came here.

MRS. MULLER: I wasn't speaking of the system, I was speaking of one classroom, sir.

MR. BURR: Well, she was a member, a consistent member of this Seward School Board System, wasn't she?

MRS. MULLER: Yes, she was.

MR. BURR: And you were complaining about her, weren't you?

MRS. MULLER: Yes, I was not complaining, I was asking for help which is some difference — I often think a word to the wise is sufficient.

MR. BURR: The fact that Mr. Fabricius made the statement which you say he did, that there would be some heads roll, could that not be interpreted as meaning that he intended to improve the caliber of the teachers in this system distinguished from arbitrarily and indiscriminately getting rid of teachers?

MRS. MULLER: You interpret that the way you want to, sir.

MR. BURR: Well, did you have any reason to believe otherwise at that time?

MRS. MULLER: At that time, I didn't dwell on the subject, sir.

MR. BURR: Well, in fairness to Mr. Fabricius did you have any reason to believe that he by that statement assuming he meant it?

[212] MRS. MULLER: I felt that he meant it by the tone of his voice.

MR. BURR: Assuming he did say it you have any reason, or did you have any reason at that time to believe that he was going to arbitrarily without any reason or rhyme start chopping heads off of old time and old tenure teachers in the School System at Seward?

MRS. MULLER: I couldn't see why heads would roll of many at that time?

MR. BURR: You were only complaining about one?

MRS. MULLER: Yes, sir.

MR. BURR: Well, were you familiar about the rest of them?

MRS. MULLER: I think I was, sir.

MR. BURR: Did you know each of them and their respective teaching abilities?

MRS. MULLER: Probably as good a first hand knowledge as any mother would know whose sons have gone through the complete system.

MR. BURR: And you base their teaching abilities upon the complaints, or the lack of complaints of your own children?

MRS. MULLER: No, not entirely.

MR. BURR: Would you consider your opinion of the teaching abilities of the teachers in this system superior to that of an educator with 35 years of experience?

MRS. MULLER: Would you repeat that?

MR. BURR: Would you consider your opinion of the teaching abilities or the teaching capacities of each member of this system superior to that of the Superintendent, Mr. Fabricius?

MRS. MULLER: No, if I thought it was, I would have applied for the job myself.

MR. BURR: Yes, and would you not concede that Mr. Fabricius in his experience and in his capacity as Superintendent would be in a better position to evaluate the teachers for whom this system is run and perhaps, under whom the system is run?

MRS. MULLER: He surely should be.

MR. BURR: And if Mr. Fabricius in the exercise of his judgment based upon 35 years of satisfactory service in other systems, sees fit to non-retain teachers, would you have any reason to believe that he is doing it without any reason?

MRS. MULLER: Repeat that again.

MR. BURR: Well, you recognized and concede that Mr. Fabricius has 35 years, or some such a matter as that, in the school system.

MRS. MULLER: Yes.

[213] MR. BURR: In point of fact, I believe, unless challenged, I think he's the oldest teacher experience wise in the State of Alaska. I don't know if you are aware of that? But assuming that he made a decision

that a particular teacher in the Seward School Board System did not measure up to his qualifications, the qualifications that in his experience and the regulations that he's bound by, if he made such a determination would you have any reason to believe that he was in error?

MRS. MULLER: My personal thought was at the time that he might be in error, because as he pointed out he had only been here two months, and in two months maybe he couldn't properly have evaluated all of the teachers. He had not, as he said, yet been to the Grammar School, and how would he know in two months if there were 1/3 of the teachers which should not be retained?

MR. BURR: Mrs. Muller, as a housewife and a mother of children in the Seward School Board System, do you consider that the teachers which constitutes the teaching body of the system, as having a moral responsibility apart from any regulation to support the superintendent of schools?

MR. WALTON: Now, I am going to have to object I think everybody is interested in guarding this hearing — this really goes far beyond the scope of this investigation. What Mrs. Muller's opinions might be about the moral obligations of teachers, really does that have a proper place in this hearing? I object to this line of questioning to this witness.

MR. BURR: This is your witness, Mr. Walton and she was produced for the purpose of eliciting a statement attributed to Mr. Fal ricius, who apparently is on trial as well as your clients. I think we have a right to go into the background of this statement and find out just exactly what it's based on — what her thinking is concerning Mr. Fabricius — she's formed an opinion and I want to know what it is.

MR. WALTON: You're going beyond the scope of direct and her opinion is not inquired. You inquired of her opinion — she gave you an answer, you didn't like it — I don't think you have to impeach her. I asked her only as to facts about a particular conversation period.

MR. BURR: Are you through?

MR. WALTON: Need more be said?

MR. BURR: Do you have any objections?

MR. WALTON: I have raised an objection.

MR. BURR: Well, do you want to restate it so you can get a ruling?

MR. WALTON: Is it necessary, Mr. Chairman?

CHAIRMAN CASEY: Would you like to restate that?

MR. WALTON: Yes, Mr. Chairman.

[214] CHAIRMAN CASEY: No, I wasn't talking to you Mr. Walton, Mr. Burr.

MR. WALTON: Thank you sir. Well, my objection was simply this it was only two fold. Mr. Burr has gone has started to go far beyond the scope of my examination of this witness and he is beginning to now inquire of matters which she is, I think, admittedly not qualified to testify. Namely as to what obligations, what moral obligations teachers in the public school system might have. Now is this — what this witness' opinion might be as to the moral obligations which rests upon teachers in this School System, is not relevant to this controversy. No matter what this witness' opinion is, it will have no bearing on whether or not these appellants were guilty of the crimes charged.

MR. BURR: Oh, let me withdraw the question — I'll save us a little time. Mrs. Muller, do you have any animosity towards Mr. Fabricius at this time?

MRS. MULLER: No sir, I don't.

MR. BURR: Are you satisfied with him as Superintendent of Schools?

MRS. MULLER: With qualifications.

MR. BURR: What qualifications?

MRS. MULLER: I think he's imposed somes rules and regulations, which I think, are over and above what we need. But like you say, he has 35 years of experience and I have had none, so surely he knows better than I.

MR. BURR: So are you willing to concede that the

regulations that he has devised and requested the teachers to adhere to and be bound by are reasonable?

MRS. MULLER: I think that has nothing to do with it — do I have to answer that?

MR. WALTON: I would like to object for the same reason — what Mrs. Muller's opinions about the regulations

MR. BURR. I'll agree. Is Mr. Blue or Mr. Watts, either one of them, particular friends of yours?

MRS. MULLER: No sir.

MR. BURR: That's all I have.

MR. WALTON: No questions.

Mr. Thomas Howell if it please the Board. Mr. Howell, will you please raise your right hand. Do you swear that the testimony you are about to give is the truth, nothing but the truth, so help you God?

MR. HOWELL: I do.

MR. WALTON: Will you please be seated? Will you please state your full name?

[215] MR. HOWELL: Thomas R. Howell.

MR. WALTON: And how do you spell the last name?

MR. HOWELL: H-O-W-E-L-L.

MR. WALTON: We've never before had the pleasure of meeting, have we?

MR. HOWELL: I sat on the Board of the last hearing we had.

MR. WALTON: Oh, were president of, were you a menber of the Board during our April hearing?

MR. HOWELL: I was here during all those meetings — that was a year ago — not this year.

MR. WALTON: I've never spoken to you personnally, have I?

MR. HOWELL: No.

MR. WALTON: Where do you reside, Mr. Howell?

MR. HOWELL: Seward, Alaska.

MR. WALTON: And how long have you lived here?

MR. HOWELL: Twenty-four years, I think.

MR. WALTON: May I inquire what is your occupation?

MR. HOWELL: Assistant postmaster.

MR. WALTON: Were you connected with the school system here in Seward, recently?

MR. HOWELL: I was on the Board for 8 years. I was president for the last 2 years. Last year I hadn't been on the Board, I mean up to that time.

MR. WALTON: When did your last term as school board member cease?

MR. HOWELL: Just after all this trouble started — about last — the next election following it — a year ago.

MR. WALTON: That would have been in August of 1959?

MR. HOWELL: October I think the election comes in.

MR. WALTON: I see — well it was October of 1959 that you ceased being a member of the Board?

MR. HOWELL: Yes, a year ago — a year ago this last election.

MR. WALTON: And you were chairman of the board during the two years ending October, 1959?

MR. HOWELL: That's right.

[216] MR. WALTON: Mr. Howell, do you recall a special meeting of the Seward School Board held on May 28, 1959 at which the Board was present and Mr. James Watts was present?

MR. HOWELL: That's a pretty hard question — we had so many meetings at that time that just picking up one meeting and asking if I was there. I'd like to see the minutes of the Board meeting and kind of refresh my memory otherwise I don't know — it would be kind of hard to remember that one particular date.

MR. WALTON: Yes, in the spring of 1959 there were some negotiations back and forth between the Board and the SDTA and the AFT, was there not?

MR. HOWELL: Well, the first I heard of that union was that general meeting we had just before School was out a year ago — I can't remember the exact date. That was the first time I'd heard of the actual Unions.

MR. WALTON: Who was present at that particular meeting?

MR. HOWELL: That was a meeting held by the School Board and some of the teachers had this — the first I'd heard of it that Mr. Blue was the head of the Union and they had a lawyer from Chicago — that was the first I heard of it.

MR. WALTON: Was that the occasion which the Board considered whether or not to reinstate certain teachers?

MR. HOWELL: Yes it was.

MR. WALTON: That would have been then on May 8th, 1959.

MR. HOWELL: It was just before school was out so it would be about approximately.

MR. WALTON: Do you recall following that meeting that there was another Board meeting in which Mr. James Watts appeared on the behalf of the AFT?

MR. HOWELL: I know he appeared at some meetings — I couldn't recall the exact date, though.

MR. WALTON: Do you recall the meeting in which he did appear, and when he appeared, and the Board was present and Mr. Fabricius was present?

MR. HOWELL: I believe we called a special meeting — I think I called a special meeting at his request — I don't remember the exact date — it could have been that date though.

MR. WALTON: And at that meeting, do you recall that Mr. Watts brought up for consideration the problems pertaining to Jerry Smith, and Bill Swick?

MR. HOWELL: No, I shouldn't swear to that unless it was in the minutes. I think it had been brought up at some meeting, yes, but I don't know what meeting it was at.

[217] MR. WALTON: Do you recall in the course of that meeting, any conversation had between Mr. McRae and Mr. Watts?

MR. HOWELL: No, I'm afraid I don't.

MR. WALTON: Do you recall during the course of that meeting there were conversations between Mr. Fabricius and Mr. Watts?

MR. HOWELL: What took place over a year ago it's pretty hard for me to remember.

MR. WALTON: Have you spoken with Mr. Watts in the last few days?

MR. HOWELL: I think I saw him three or four days ago.

MR. WALTON: And did he then inquire of you whether or not you remembered some conversation which took place at that meeting?

MR. HOWELL: He asked me if I remembered that meeting — I had a hard time remembering exactly which meeting he was talking about.

MR. WALTON: He also asked you if you could remember conversations at that time, didn't he?

MR. HOWELL: He didn't give any definite conversations.

MR. WALTON: Didn't Mr. Watts ask you whether or not Mr. McRae said to him, in words to this effect, Jimmy, you and all your trouble makers should resign so we can organize a good school?

MR. HOWELL: No, I don't.

MR. WALTON: Do you recall Mr. McRae saying any such thing?

MR. HOWELL: No, I don't.

MR. WALTON: Do you recall Mr. Fabricius at that meeting, or at any other meeting, saying anything similar to this — you and your union ought to have your throats cut — ?

MR. HOWELL: No, I'm afraid not.

MR. WALTON: Didn't you advise Mr. Watts within the last few days that you did remember such statements having been made?

MR. HOWELL: No, I don't think so.

MR. WALTON: No further questions.

MR. BURR: No questions.

MR. WALTON: Excuse me, there's just one last question I would like to ask. When this trouble first started, as you stated, did the Seward District Teacher's Association contact the Board?

MR. HOWELL: I think Jimmy was there several times as a representative.

[218] MR. WALTON: And did the Board recognize him as a representative of the SDTA?

MR. HOWELL: That was a meeting held by the School Board and some of the teachers had this — the first I'd heard of it that Mr. Blue was the head of the Union and they had a lawyer from Chicago — that was the first I heard of it.

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MR. HOWELL: No, I shouldn't swear to that unless it was in the minutes. I think it had been brought up at some meeting, yes, but I don't know what meeting it was at.

[217] MR. WALTON: Do you recall in the course of that meeting, any conversation had between Mr. McRae and Mr. Watts?

MR. HOWELL: No, I'm afraid I don't.

MR. WALTON: Do you recall during the course of that meeting there were conversations between Mr. Fabricius and Mr. Watts?

MR. HOWELL: What took place over a year ago it's pretty hard for me to remember.

MR. WALTON: Have you spoken with Mr. Watts in the last few days?

MR. HOWELL: I think I saw him three or four days ago.

MR. WALTON: And did he then inquire of you whether or not you remembered some conversation which took place at that meeting?

MR. HOWELL: He asked me if I remembered that meeting — I had a hard time remembering exactly which meeting he was talking about.

MR. WALTON: He also asked you if you could remember conversations at that time, didn't he?

MR. HOWELL: He didn't give any definite conversations.

MR. WALTON: Didn't Mr. Watts ask you whether or not Mr. McRae said to him, in words to this effect, Jimmy, you and all your trouble makers should resign so we can organize a good school?

MR. HOWELL: No, I don't.

MR. WALTON: Do you recall Mr. McRae saying any such thing?

MR. HOWELL: No, I don't.

MR. WALTON: Do you recall Mr. Fabricius at that meeting, or at any other meeting, saying anything similar to this — you and your union ought to have your throats cut — ?

MR. HOWELL: No, I'm afraid not.

MR. WALTON: Didn't you advise Mr. Watts within the last few days that you did remember such statements having been made?

MR. HOWELL: No, I don't think so.

MR. WALTON: No further questions.

MR. BURR: No questions.

MR. WALTON: Excuse me, there's just one last question I would like to ask. When this trouble first started, as you stated, did the Seward District Teacher's Association contact the Board?

MR. HOWELL: I think Jimmy was there several times as a representative.

[218] MR. WALTON: And did the Board recognize him as a representative of the SDTA?

MR. HOWELL: No, that depends on what you mean by representative. He did say he represented the teachers and we listened to him, yes.

MR. WALTON: And you recognized him as representative of the teachers?

MR. HOWELL: Yes, I guess you could say that.

MR. WALTON: Didn't you in fact, address some correspondence to him as such?

MR. HOWELL: I can't remember that I ever wrote a letter to him, or not?

MR. WALTON: You did not.

MR. HOWELL: I don't remember any letter written.

MR. WALTON: Do you remember Mr. Watts ever appearing before the Board on behalf of the AFT, American Federation of Teachers?

MR. HOWELL: I know he's appeared there — I guess he must have once or twice. I believe he did.

MR. WALTON: You answer for the record is he did, but you don't remember what the conversation was.

MR. HOWELL: I don't remember what the conversation was.

MR. WALTON: Do you recall whether or not the Board on this occasion, on any of those occasions, ever objected to Mr. Watts appearance, or the appearance of anyone else, without having first contacted Mr. Fabricius?

MR. HOWELL: I don't think they ever told them they couldn't come.

MR. WALTON: You were President of the Board at this time, were you not?

MR. HOWELL: I was president for two years, yes.

MR. WALTON: Did you as president of the Board ever advise Mr. Watts or Mr. Blue that they were in violation of the regulation that required them to direct all their communications first to the Superintendent?

MR. HOWELL: I don't think I ever advised them of that.

MR. WALTON: As a matter of fact, Mr. Howell, were you at that time aware that such a regulation existed or didn't exist?

MR. HOWELL: Well, I had been told that from the last Superintendent also that they were supposed to go directly to him and not to the Board.

MR. WALTON: Did you of your own personal knowledge know whether or not that particular regulation did exist?

MR. HOWELL: Both Superintendents had told me it existed, yes.

[219] MR. WALTON: And that was the extent of your knowledge?

MR. HOWELL: Yes.

MR. WALTON: Is there any particular reason why the appellants were never instructed to conduct themselves in accordance with such a regulation if it did exist?

MR. HOWELL: I think they had the Teacher's deal which explained it, on this here regulation we set up for teachers.

MR. WALTON: Could you explain, Mr. Howell, I don't know what you mean.

MR. HOWELL: You have a regulation here set up by the School Board as to how the teacher was supposed to act and I think it's in there. I saw it in some of your exhibits the other night.

MR. WALTON: Mr. Chairman, may I please have Board's Exhibit — it's letter addressed to Mr. Fabricius signed by Mr. Howell.

Mr. Howell, I would like you to look at the Board's Exhibit #16.

MR. HOWELL: Yes sir.

MR. WALTON: You've read Exhibit 16, have you not?

MR. HOWELL: Yes sir.

MR. WALTON: Now, Mr. Howell, will you please tell the Board, if you remember, what circumstances led up to this letter?

MR. HOWELL: Right now, I couldn't say — I'd have to figure the dates and what happened.

MR. WALTON: This letter is dated January 16, 1959. Do you remember a School Board meeting held on January 13, 1959 at which, according to the

minutes which are copies, some discussion was had of some troublemakers known as Hollenbeck, Svedlund, and others.

MR. HOWELL: I know their names were brought up, yes. I couldn't say the exact date.

MR. WALTON: Do you recall that they were referred to in that meeting as troublemakers as the minutes indicate?

MR. HOWELL: If the minutes indicate, yes.

MR. WALTON: Do you recall who it was who referred to them as troublemakers on that occasion?

MR. HOWELL: I think we took the recommendation of Mr. Frampton, if I remember right.

MR. WALTON: I see. It was Mr. Frampton who referred to those teachers as troublemakers?

MR. HOWELL: I wouldn't swear to that but I think they took his recommendation to the Superintendent.

[220] MR. WALTON: Do you recall upon whose recommendation it was that this particular letter was written — Exhibit 16?

MR. HOWELL: There must have been a discussion at the Board Meeting, I guess.

MR. WALTON: Mr. Fabricius was interested in having this letter written, was he not?

MR. HOWELL: Yes.

MR. WALTON: Why was he?

MR. HOWELL: We talked about it in the Board and we decided — it must be in the minutes that it was authorized.

MR. WALTON: Yes.

MR. HOWELL: I don't think it was my letter particularly, I signed it as a President — it was just a action of the Board.

MR. WALTON: Exactly — correct. You signed the letter because it had to go out under the name of the Board?

MR. HOWELL: That's right.

MR. WALTON: Mr. Fabricius was interested at that time in helping create a discipline among the ranks of the teachers?

MR. HOWELL: We had talked for a long time about

getting some set discipline for the teachers and regulations. It was brought up before Mr. Fabricius was here and we wrote to different school boards in Alaska and we just — I don't think there's a thing in the book that isn't in some other school in Alaska. I mean that was my impression.

MR. WALTON: Did Mr. Fabricius indicate that he felt that there should be some public faculty meeting concerning the questions of discipline?

MR. HOWELL: I don't remember that, sir.

MR. WALTON: Do you remember whether or not the Board told him to have a Faculty Meeting and discuss with the teachers discipline and ethics problems, conduct problems.

MR. HOWELL: Well, we wanted him to tell the teachers what our ideas were, because we made the plans and it was up to the Superintendent and principal to carry it out.

MR. WALTON: And you felt that he adequately accomplished that, did you?

MR. HOWELL: I believe he did.

MR. WALTON: As a matter of fact he had a part in drafting this letter, did he not?

MR. HOWELL: I believe he drafted it.

[221] MR. WALTON: Do you remember where it was drafted?

MR. HOWELL: I presume in the office.

MR. WALTON: In his office?

MR. HOWELL: In the school office — that would be his office, yes.

MR. WALTON: That would be his office?

MR. HOWELL: Right here in the High School.

MR. WALTON: Were did you maintain your office at that time?

MR. HOWELL: You mean an office at school?

MR. WALTON: Yes.

MR. HOWELL: We met in the office here in the High School and we had our Board Meetings here — that's the only office we had — I had no office as president.

MR. WALTON: Your occupation at the time was Postmaster?

MR. HOWELL: Assistant.

MR. WALTON: Now, I understand Mr. Fabricius gave you this letter for your signature?

MR. HOWELL: I presume, so, but I couldn't say for sure, but I imagine that's what happened.

MR. WALTON: And where would that have been — that would have been three days after the meeting, would it not? The letter is dated the 16th and minutes reflect the meeting was held on January 13th.

MR. HOWELL: I don't remember, I might have walked up here and talked to him in the office, I wouldn't say to that.

MR. WALTON: The letter was then presented to you for signature.

MR. HOWELL: Yes.

MR. WALTON: Was it presented by him — or you say you don't know.

MR. HOWELL: It might have been by the Secretary.

MR. WALTON: And who was that?

MR. HOWELL: Mrs. Jeffrey was secretary at the time.

MR. WALTON: Was she on the Board?

MR. HOWELL: No.

[222] MR. WALTON: She wouldn't have had authority to write this letter, would she?

MR. HOWELL: She could have written it as secretary by the author of the Board — the actually writing of it.

MR. WALTON: You mean the typing of it?

MR. HOWELL: Yes.

MR. WALTON: But I mean she wouldn't have had authority to actually compose it?

MR. HOWELL: No.

MR. WALTON: Mr. Fabricius had that authority, didn't he?

MR. HOWELL: I don't think it was his letter — it was the Board's.

MR. WALTON: But I mean as to who — obviously it was the Board — signed Seward School Board by Thomas Howell.

MR. HOWELL: Yes.

MR. WALTON: Who prepared it besides Mr. Fabricius?

MR. HOWELL: It was the action of the Board.

MR. WALTON: But I mean do you know actually who wrote it?

MR. HOWELL: I presume actual writing was the Secretary of the Board.

MR. WALTON: And do you presume that she copied something or wrote something that was dictated to her?

MR. HOWELL: No, I presume the Board made these ideas and told her to write it.

MR. WALTON: And you presume Mr. Fabricius had a part in it?

MR. HOWELL: I think he approved of it.

MR. WALTON: No further questions.

MR. BURR: No questions.

CHAIRMAN CASEY: We will have a 5 minute recess. Recessed at 10:35 PM. Reconvened at 10:50 PM.

The meeting will be reconvened. Mr. Walton, would you proceed, please.

MR. WALTON: Yes. Is Mr. Murl Trevethan here. Would you raise your right hand? Do you swear that the testimony you are about to give will be the truth and nothing but the truth, so help you God.

MR. TREVETHAN: I do.

MR. WALTON: Please be seated. Would you please state your full name?

[223] MR. TREVETHAN: Murl Trevethan.

MR. BURR: I didn't catch the name, sir?

MR. TREVETHAN: T-r-e-v-e-t-h-a-n, M-u-r-l the first name.

MR. WALTON: Were do you reside, sir?

MR. TREVETHAN: Here in Seward.

MR. WALTON: How long have you lived here?

MR. TREVETHAN: Thirty years.

MR. WALTON: And what is your occupation?

MR. TREVETHAN: Foreman for the Seward dock.

MR. WALTON: Did you have any occasion to work with the Fire Department?

MR. TREVETHAN: Yes, I've been on the Seward Fire Service since 1934, since 1942 I've been Fire Chief on the Dock — I belong to both the Dock Department and the Seward Fire Department.

MR. WALTON: Does your work with the Seward Fire Department consist of a voluntary nature or is it on a monetary basis?

MR. TREVETHAN: Voluntary. I'm a volunteer uptown in the Seward Fire Department and I get a small token payment — we're only classed as a volunteer in the Dock department, also.

MR. WALTON: Who is the Fire Chief in Seward?

MR. TREVETHAN: It is now Oscar Watsjold.

MR. WALTON: Who was the Fire Chief in 1959?

MR. TREVETHAN: Fred Kielcheski — now retired.

MR. WALTON: Were you acquainted with a gentleman named Jesse Moore?

MR. TREVETHAN: Yes, he was a janitor at the Grade School — I guess it was the Grade School.

MR. WALTON: In the course of your duties as volunteer fire inspector, did you have any occasion to contact Jesse Moore?

MR. TREVETHAN: The day that we made what we call our first fire inspection in, possibly a year or a couple of years, — what brought it on was The Lady of Our Angels Fire in Chicago — the school where about 90 children were lost — 96 or something like that. The Fire Service throughout the U.S. admonished all Fire Departments to immediately inspect schools with the idea of eradicating any hazards — eliminating fire hazards to try to avoid a reoccurrence of another bad school fire. So, soon after that we went up to the School on an inspection tour. I don't recall now whether we — I believe we called a Fire Drill and had the pupils leave the room, and also went on an inspection tour of the school.

[224] MR. WALTON: And were the scope of Jesse Moore's duties as janitor discussed with Mr. Kielcheski?

MR. TREVETHAN: Yes, as we went around, the

janitor was showing us around, Jesse Moore — I guess his proper title was janitor — I believe that's correct. He was right with us and I was right alongside of Kielcheski there were about 5 or 6 firemen, Mr. Kielcheski, myself, and at least 4 others, and what you want to know is the discussion?

MR. WALTON: With respect to between Mr. Kielcheski and Mr. Moore with respect to his duties.

MR. TREVETHAN: Well, we saw several hazards — a cord across the floor running into an icebox, which could be scuffed up and any electric cord any time it becomes faulty can cause a fire and rubber will burn a short circuit and it will burn to the wall and cause a fire. That was one of the first things that Mr. Kielcheski told him he should get rid of and he said that should he run in solid conduit and Mr. Moore said that the Superintendent had advised him to do it. Kielcheski said, don't you do it. Well, he said the Superintendent wants me to do it.

MR. WALTON: By Superintendent you mean Mr. Fabricius?

MR. TREVETHAN: Mr. Fabricius. Kielcheski said, don't you touch any electrical work — that has to only be done by a qualified electrician — it's a fire hazard if it's done any other way. It has to be done by a qualified electrician. Mr. Moore said, well, he wants me to do electrical work and he wants me to do furnace work. And Mr. Kielcheski said I feel — and Mr. Moore said I feel I'm not qualified to do either one — it had to be done by qualified men — a furnace man or an electrician.

MR. WALTON: Did this create any kind of a conflict to your knowledge?

MR. TREVENTHAN: Well, Mr. Moore said it just about means my job. He said, I believe at that time he said he's asking me to sign some kind of work contract that he would do that work — willing to do that work or that he would do that work. And Mr. Kielcheski told him not to do that work. I don't recall whether he told him anything about signing his contract but it seemed that Jesse Moore was very much afraid that

his job was in jeopardy if he didn't do the work and the Fire Chief forbid him to do the work.

MR. WALTON: Did you thereafter have occasion to be present with Mr. Fabricius and Fire Chief Kielcheski in any way connected with this matter?

MR. TREVETHAN: We were at the school once more and they had a discussion at the Fire Hall that I overheard.

MR. WALTON: What was that — between who?

MR. TREVETHAN: Between Mr. Fabricius and Mr. Kielcheski.

MR. WALTON: What did that concern?

[225] MR. TREVETHAN: Well, I stepped into the room — they were talking, Mr. Fabricius was talking and Mr. Kielcheski was answering a little bit. The gist of the conversation was that Mr. Fabricius said, those are only rumors, they're just rumors — that's what they are, they're just rumors. He said, I didn't say those things that I don't know where they're coming from — they're just rumors. Well, he said, I do know where they're coming from — they're coming from the school, that's where they're coming from. Well, he said, they're coming from the teachers, that's where they're coming from, they're coming from the teachers. And I think Mr. Kielcheski probably grunted an answer — he at least made a noise and then Mr. Fabricius added, well, I had about the same thing down at Wrangell — he said, I had to clean out about 80% of them to clear it up and he said, it looks like I'm going to have to do the same thing here.

MR. WALTON: This conversation was held about the middle of May, 1959?

MR. TREVETHAN: I would guess then. The conversation is correct, the date might be a little off — I made no effort to keep track of the date but I clearly remember the conversation.

MR. WALTON: Now, when Mr. Fabricius was protesting that these were all rumors descending by the teachers, do you know what he was referring to — rumors of what?

MR. TREVETHAN: Well, I blew the lid off of things at a Fire Meeting one night after letting it go for about three months when this school business has got so I guess all clubs discuss it, most any place they have a meeting about half the time it seems we all wind up in a school fight. We had that a couple of times at the Fire Hall.

MR. WALTON: What was it that Mr. Fabricius was saying was not his, but something the teachers had said?

MR. TREVETHAN: Well, what blew the lid off the fire meeting was I said to Kielcheski, well I understand Fabricius made the remark that you were a pompous old fool and that you better not come back up there any more. And Kielcheski flew out of his seat with his arms in the air and he said, we'll go, tomorrow. He and I did go back up the next day and I think another day or two.

MR. WALTON: And was this what Mr. Fabricius was protesting that he had not said?

MR. TREVETHAN: Then, I think it was probably a few days later I overheard this conversation in the Fire Hall between Mr. Fabricius and Mr. Kielcheski.

MR. WALTON: No further questions.

MR. BURR: Who is this Mr. Kielcheski?

MR. TREVETHAN: Seward Fire Chief.

MR. BURR: What is your present occupation?

MR. TREVETHAN: Foreman on the dock.

[226] MR. BURR: You don't know the substance of the conversation that you overheard between Mr. Fabricius and Kielcheski, do you?

MR. TREVETHAN: What I just stated.

MR. BURR: Do you know what they were talking about — what these rumors were or anything of that nature?

MR. TREVETHAN: Rumors of what Mr. Fabricius had said concerning Mr. Kielcheski.

MR. BURR: Did you just happen on to the scene and overhear these people?

MR. TREVETHAN: Yes.

MR. BURR: Were you eavesdropping on the conversation?

MR. TREVETHAN: No, I went in to see Mr. Kielcheski — I recall also because Fred made a remark about it — what I went in to see him about was the Bureau of Education at various times has sponsored fire training programs — especially the last two, three years. And, while Mr. Fabricius was there, before he had left, I mentioned something concerning fire education program or the training that the Bureau of Education was putting on. After Mr. Fabricius left, Fred said to me, did you notice Mr. Fabricius really perked up his ears when you mentioned the Bureau of Education? He said, he really came to life when you mentioned that.

MR. BURR: I take it from your testimony you don't like Mr. Fabricius very well?

MR. TREVETHAN: He has done me no harm.

MR. BURR: Are you intending to do him any harm with your testimony?

MR. TREVETHAN: No, I'm merely stating truth and facts.

MR. BURR: Who solicited your testimony tonight, Mr. Trevethan?

MR. WALTON: Objection to the question.

MR. BURR: Who contacted you to appear at this hearing?

MR. TREVETHAN: During a discussion I happened to run into Mr. Watts about a week ago and he mentioned there was a hearing, he said, you might be asked to testify, maybe you wouldn't like to, what you've heard. I said, it doesn't make a bit of difference with me I'm willing to testify what I've heard.

MR. BURR: Now, who did you first tell what you heard to?

MR. TREVETHAN: This conversation that I've just repeated? Well, I told three members of the School Board, Mr. Casey, Mr. McRae, and Mr. Howell.

MR. BURR: Was that in the nature of a complaint about which you'd heard?

MR. TREVETHAN: Just a conversation that I heard. But the thing that impressed me [227] that

80% of the teachers in Wrangell being cleaned out and probably 80% of them here being cleaned out and I don't believe you have to clean out 80% of anybody, anyplace to clean anything out. It hasn't been my experience in the work on the Dock.

MR. BURR: You think that 80% of nothing can be undesirable then?

MR. TREVETHAN: What do you call nothing — the personnel?

MR. BURR: Well, let me say this, 80% of the personnel of any group in your opinion could not in any circumstances be undesirable, for any reason?

MR. TREVETHAN: Well, I wouldn't say for any reason, but I've never seen any group in my lifetime that you had to get rid of 80% of them to straighten anything out.

MR. BURR: You're not prepared to say that this within the realm of possibility, are you, Mr. Trevethan?

At the time that you overhead this conversation, Mr. Trevethan, did you know how long Mr. Fabricius had been in Wrangell? If I told you he was there 10 or 15 years, would that make any difference in the statement you heard him say and what it meant to you?

MR. TREVETHAN: I understand he was there 25 years.

MR. BURR: Well, in 25 years would you consider it unusual to have 80% turnover in your personnel?

MR. TREVETHAN: Possibly any place would have that much turnover in that length of time.

MR. BURR: Well, it's not such a shock to your conscience to have 80% turnover during his tenure in Wrangell — 25 years, is it?

MR. TREVETHAN: I didn't take it that way when he said he had to clean out 80% of them to clean up a certain issue, I don't think that any issues you have to clean up would run 25 years.

MR. BURR: What issue was he talking about?

MR. TREVETHAN: He didn't mention — just that he cleaned out about of 80% in Wrangell.

MR. BURR: Did you take the trouble to ask him what the issue was before you talked this matter over with three members of the Board?

MR. TREVETHAN: I asked him no question whatsoever.

MR. BURR: Yet, you saw fit to peddle this rumor that you heard to three members of the Board in an effort to spread more difficulty.

MR. TREVETHAN: I didn't peddle it, I just told them what I heard him say. Casey, looked me in the eye and said, I don't believe you.

MR. BURR: At this point, do you have any knowledge, even yet, as to what the trobule was?

[228] MR. TREVETHAN: No. Possibly, the same as about here.

MR. BURR: Well, what's the trouble, here, Mr. Trevethan?

MR. TREVETHAN: I don't know, except that this town seems to be torn apart.

MR. BURR: Do you have any answer to the solution — or any solution to the problem?

MR. TREVETHAN: Well, I'm sure there's a solution. The trouble's all been the last couple of years.

MR. BURR: You had no trouble prior to that?

MR. TREVETHAN: Not that I know of — there could have been trouble that I didn't know about. But I didn't hear of anything — I had three children graduate from school — I have one in high school, I have two in Grade School.

MR. BURR: I have no further questions.

MR. WALTON: Mr. Trevethan, you say all the trouble occurred in the last couple of years?

MR. TREVETHAN: All the trouble that I know anything about with the school.

MR. WALTON: You're talking about trouble in the School System?

MR. TREVETHAN: Yes.

MR. WALTON: And all that had occurred during and since Mr. Fabricius advant on the scene?

MR. TREVETHAN: If there was any other trouble before he came, then I didn't hear of it, I didn't know

of any. I attended school affairs, I had children in school.

MR. WALTON: But certainly not the sort of trouble that tears the town apart as it now is?

MR. TREVETHAN: That's what I was referring to, yes.

MR. WALTON: No further questions.

MR. BURR: No questions.

CHAIRMAN CASEY: For the record I wish to note that the hour is approximately 11:00 PM and the Board has been in session since 10 o'clock this morning, therefore this case is hereby recessed until Friday the 12th (note — Friday is the 11th) day of November, 1960, at the hour of 7:30 PM in this room. Recessed.

* * *

[256] MR. WALTON: Be seated. Will you state your full name.

MR. SWICK: William A. Swick.

MR. WALTON: Where do you live, Mr. Swick?

MR. SWICK: In Seward.

MR. WALTON: Do you have a family?

MR. SWICK: I do.

MR. WALTON: What does your family consist of?

MR. SWICK: One wife and six children.

MR. WALTON: Mr. Swick, what is your occupation?

MR. SWICK: I'm presently unemployed.

MR. WALTON: Have you been trained to pursue any occupation?

MR. SWICK: Yes, sir.

MR. WALTON: What occupation?

MR. SWICK: The occupation of teaching.

MR. WALTON: What has your training and educational background been?

MR. SWICK: I have a Bachelor of Arts in Allegheny College, 1948, Master of Science in Education, Syracuse University, 1955.

MR. WALTON: Have you taken any further educational credits?

MR. SWICK: Yes, sir. I have twelve graduate hours beyond my Masters.

MR. WALTON: Where were those taken sir?

MR. SWICK: At Syracuse.

MR. WALTON: In what subject?

[257] MR. SWICK: In Educational Administration.

MR. WALTON: And what was your Master's Degree in?

MR. SWICK: It was in Audio-Visual Education and later, since I had an excess of hours in Administration.

MR. WALTON: How long have you lived in Alaska, Mr. Swick?

MR. SWICK: Ten years.

MR. WALTON: And did you pursue the occupation of teaching in the States before you came to Alaska?

MR. SWICK: No, I did not.

MR. WALTON: Have you been a teacher in Alaska?

MR. SWICK: Yes, I have.

MR. WALTON: Will you please tell the Board where you've taught and for what periods of times?

MR. SWICK: Yes. I taught in Skagway from 1950 to 1957 and in Seward from 1957 to 1959.

MR. WALTON: I'd like to get one thing cleared up right now. I believe that there is a letter introduced by the Board from someone in Skagway pertaining to Mr. Swick. May I please see it? Let me hand you the Board's Exhibit No. 15 — would you like to read it, or have you ever read it before?

MR. SWICK: Very briefly the other night when it was entered, Mr. Walton.

MR. WALTON: I don't think it bears a signature, does it?

MR. SWICK: It's a reproduction of a signature, apparently.

MR. WALTON: Would you like to comment on that letter or not, at this time?

MR. SWICK: At your pleasure.

MR. WALTON: It says in this letter — or what appears to be a copy of a letter, it states that the author states that he has heard that Mr. Swick left Skag-

way as he felt he should be advanced the position of Superintendent. Any comment Mr. Swick?

MR. SWICK: I never did apply for the position of Superintendent.

MR. WALTON: Why did you leave Skagway?

MR. SWICK: There were several reasons. I thought I had reached a professional plateau after 7 years, my son was ready to enter High School I wanted him to be in a larger school; I wanted to be in a larger school where I had more material to work with musically — there were several reasons.

[258] MR. WALTON: I believe that this letter states also that Mr. Swick did foster a dissention among the faculty in Skagway. That at one time he tried to form a teacher's union. Any comment, Mr. Swick?

MR. SWICK: To my knowledge that term never was used in Skagway.

MR. WALTON: Which term?

MR. SWICK: Teacher's Union.

MR. WALTON: Did you engage in the formation of any Teacher's Association.

MR. SWICK: No, sir. There was an association in existence. It was a local counterpart of the NEA, to which I was elected president and remained in that position for the 7 years I was there.

MR. WALTON: Were you a charter member of that local?

MR. SWICK; No, sir, it was in existence when I arrived.

MR. WALTON; Do you know sir how this letter — if it is a copy of a letter — do you know how it originally ever happened to be written by this Mr. Fairbanks?

MR. SWICK: Yes, sir. I have reason to believe that Mr. Fabricius solicited that letter.

MR. WALTON: As a matter of fact he so testified, did he not?

MR. SWICK: I believe so.

MR. WALTON: Do you know whether or not he solicited letters concerning you from other people in Skagway?

MR. SWICK: I'm quite sure he did.

MR. WALTON: Do you have any reason to say that?

MR. SWICK: Yes, I do.

MR. WALTON: What is the reason?

MR. SWICK: I have received communications from former colleague which so informed me.

MR. WALTON: And that person is?

MR. SWICK: Deb Armstrong.

MR. WALTON: Do you know sir whether any other letters concerning your qualifications as a teacher and as a person have ever come to the attention of the Seward School Board.

MR. SWICK: Well, if the mails operated properly, they did sir.

MR. WALTON: Why do you say that?

MR. SWICK: I have reason to believe that the original of three copies which I hold now were mailed to Mr. Tom Howell, the president of the [259] Board, or merely to that title President of the Board.

MR. WALTON: A moment ago you mentioned a ~~Der~~ Armstrong and I now hand you a document which bears the day of May 30, 1959, signed Deb, addressed Dear Bill and Dorothy. I ask you if this is the letter to which you made reference just a moment ago.

MR. SWICK: Yes, it is.

MR. WALTON: May this please be marked Appellants Exhibit. May this also be marked, I don't know the numbers.

May this be marked Appellants Exhibit 11 and 12.

Now, Mr. Swick, you say you believe that the Board may have received originals of other letters. Would you say that as to Appellant's Exhibit 11 which I now hand you. Will you please identify it.

MR. SWICK: Yes this is a letter from the Rt. Rev. Magr. G. Edgar Gallant, Superintendent of the Pius-X Mission School in Skagway, Alaska at that time.

MR. WALTON: During what period?

MR. SWICK: June 26, 1959.

MR. WALTON: Addressed to whom?

MR. SWICK: The President, Seward, Public School Board, Seward, Alaska.

MR. WALTON: Concerning generally what?

MR. SWICK: Oh, the integrity of Mr. William Swick and his experience as a High School Teacher and so forth.

MR. WALTON: Thank you sir. I ask you please identify Appellant's Exhibit 12.

MR. SWICK: This is a letter signed by L. T. McGuane, Clerk of the Skagway School Board, dated May 16, 1957 and addressed to Mr. William Swick.

MR. WALTON; I thank you sir. Will you please identify Appellant's Exhibit 13.

MR. SWICK: This one while it bears no signature is a copy of a letter from James W. Burden, Assistant Manager and Cashier of the Bank of Alaska at Skagway.

MR. WALTON: Addressed to whom?

MR. SWICK: Addressed to Mr. Tom Howell, Presdent of the School Board.

MR. WALTON: Concerning generally what?

MR. SWICK: Oh my character and integrity.

MR. BURR: Mr. Walton, I have no objections to you just offering the exhibits.

MR. WALTON: I just like to have them identified for the record. Please [260] identify Exhibit 14.

MR. SWICK: This one again is not signed but typed, Ethel Herr Villesvik, wife of Mr. George S. Villesvik, from Skagway, Alaska and addressed to Mr. Thomas Howell, President, Seward School Board, dated June 10, 1959.

MR. WALTON: Concerning generally?

MR. SWICK: Same topics.

MR. WALTON: I presume Mr. Casey that these appear to be copies of originals sent to the Board, I presume that the Board has them and I'm surprised that the Board hasn't introduced these along with Exhibit — Board's Exhibit 15. And in the course of

your teaching experience, Mr. Swick, have you generally taught one or more subjects in particular?

MR. SWICK: Yes, sir.. I split my time between English and History in the High School and music in Skagway, specifically Band.

MR. WALTON: And I believe you have testified that you entered into a contract with the Seward School Board for the school year 58-59?

MR. SWICK: That is correct.

MR. WALTON: And during that school year, sir, did you teach one or more subjects in particular?

MR. SWICK: No, I was what they called the Music Teacher and I taught general music in the Grade School and Band and Chorus for the High School.

CHAIRMAN CASEY: Excuse me, Mr. Swick, will you turn this way just a little, please, the Board can't hear you.

MR. WALTON: Mr. Casey while I am talking perhaps someone could locate the employment contract for the year 58-59 for Mr. Swick. This might be an appropriate time for us to mark it. May that be marked, Mr. Casey, with the appropriate number as Appellant's Exhibit — Number 15.

And during your service in Seward Mr. Swick as a teacher, did you belong to any teacher's associations?

MR. SWICK: I did.

MR. WALTON: Which one?

MR. SWICK: I joined the Seward District Teacher's Association, the NEA affiliate.

MR. WALTON: When?

MR. SWICK: I believe both years I was actively employed - 57 first.

MR. WALTON: School year of 57-58 and school year of 58-59?

MR. SWICK: That's correct.

[261] MR. WALTON: I see. And the other association?

MR. SWICK: The American Federation of Teachers.

MR. WALTON: And when did you join that, sir?

MR. SWICK: That became effective May 4, 1959.

MR. WALTON: And were you a charter member?

MR. SWICK: I was.

MR. WALTON: Did you hold an office in that group?

MR. SWICK: I did.

MR. WALTON: Did you hold an office in the SDTA?

MR. SWICK: Not as office — I served on a committee.

MR. WALTON: Which committe was that?

MR. SWICK: That was the committee commonly known now as the Grievance Committee.

MR. WALTON: I see that was the committee in which the other members were.

MR. SWICK: Mr. Watts, Mrs. Copeland and Mrs. Wininghhoff.

MR. WALTON: You have heard the testimony previously elecited at this hearing, have you not?

MR. SWICK: Yes, I have.

MR. WALTON: And you are acquainted with the Board's Exhibit 7, the Open Letter?

MR. SWICK: Yes, I am.

MR. WALTON: That exhibit bears the date May 18, does it not, and appears to be signed by Seward Local, American Federation of Teachers?

MR. SWICK: I believe that's right.

MR. WALTON: In this case the Appellants have been charged with printing and distributing and misleading statement, therefore Mr. Swick, I am going to ask you to consider questions about Exhibit 7 with respect to statements therein contained, specifically with respect to their truth or their distortion or their misleading character. Let me ask you first though, did you participate in any way in the drafting of the Board's Exhibit 7?

MR. SWICK: Yes.

[262] MR. WALTON: Did you assist in any way in the circulation of the Board's Exhibit 7?

MR. SWICK: I did.

MR. WALTON: Off hand, do you recall whether or not any non-teachers assisted in the distribution?

MR. SWICK: It was primarily a union activity,

there may have been some casual help from friends. I don't know. Of a clerical nature.

MR. WALTON: All right. I direct your attention to page 2 of the Board's Exhibit 7 — the second paragraph following paragraph 2, wherein it states "We the Seward Local of the American Federation of Teachers have made every effort to secure correction of illegal unethical and unfair acts in the associates, therefore if the School Board knew of them, it would take corrective action." Now, would you please advise the Board whether or not that statement is misleading, distorting or false?

MR. BURR; Objection calls for a conclusion. Objection calls for conclusion.

MR. WALTON: Does Mr. Casey wish argument on this point?

MR. BURR: Go ahead and answer it I have no objection.

MR. WALTON: Is there anything false about that statement, Mr. Swick.

MR. SWICK: Not within my knowledge, no.

MR. WALTON: Will you please advise the Board what are all the efforts which were made and with which reference is thereto is made in connection with the correction of the allegedly unfair acts.

MR. SWICK: Yes, sir. After tension had mounted with the forced resignation of Jack Condor and the apparently same situation regards to the janitors, Jesse and Edna Moore, and other matters that were of rather minor nature — this business of the nonretention of the four teachers came up.

MR. WALTON: Which teachers were they?

MR. SWICK: I believe the names were Svedlund, Armstrong, Hollenbeck and Brown, Charlies Brown.

MR. WALTON: What efforts were made to contact the Board with respect to their difficulty, sir?

MR. SWICK: The Seward District Teacher's Association Grievance Committee met and drafted a letter which was sent to the Board and the Superintendent simultaneously — I believe the date was about March 23rd, somewhere in there. The letter asked

to have a meeting with the Board, asked for an understanding — if we could reach an understanding just with the Board face to face. The President of the Board, Tom Howell, I believe invited us [263] through our chairman, Mrs. Copeland, to meet with them, as we did on March 31st and the minutes of that meeting, are of course, self-explanatory. Are they in the record, yet?

MR. WALTON: Tell me what — state briefly in order to save time, what happened at that meeting?

MR. SWICK: We were stopped cold by the Board. They refused to admit that they had done anything wrong. They accused the teachers of trying to hold them up on a technicality — claimed they were morally right, although admittedly in violation of the law. A situation totally incomprehensible to me, but apparently it's comprehensible to them and the meeting ended after two hours, a complete stalemate. Mr. Jeffrey, I think, commented that they'd take it to the courts if we pushed it, so we were dismissed.

MR. WALTON: That was the March 31st meeting?

MR. SWICK: March 31st meeting.

MR. WALTON: Incidentally, this letter that you say was written to the Seward School Board on March 20th, or in the middle of March, do you happen to have a copy of that?

MR. SWICK: No, I don't, sir — we didn't keep the copies — that is, I don't have a copy now.

MR. WALTON: You presume that a copy might be kept by the SDTA?

MR. SWICK: It should be, yes.

MR. WALTON: And this letter, was it written at anyone's request in particular?

MR. SWICK: It was written at the request of Mrs. Hollenbeck and Svedlund.

MR. WALTON: And, following the March 31st meeting, were any other efforts, such as those referred to made?

MR. SWICK: Yes, sir. After rejection by the Board, we send the total complex to the NEA Administrative Offices in Washington, D.C. to seek

counsel there. After two weeks we get a reply from the NEA expert administrative — or legal counsel on this matter urging us in view of the fact that we were a new state and that this was a new law and that a very valuable precedent could be set to seeing it through to its enforcement. That we pursue the case with all vigor. The Executive Committee of the SDTA of which I was not a member, did meet and on the basis of that letter wrote again to the School Board asking for the contracts within a specified number of days and quoting parts of the NEA letter.

MR. WALTON: And did that letter seek any relief of any sort?

MR. SWICK: Yes it asked for its contracts to be issued according to law.

MR. WALTON: I see and what response was received by the SDTA from the Board?

MR. SWICK: None.

[264] MR. WALTON: No oral response?

MR. SWICK: Not that I am aware of.

MR. WALTON: No written response?

MR. SWICK: Certainly no written response.

MR. WALTON: Contracts were not reinstated?

MR. SWICK: No, sir.

MR. WALTON: Were any further efforts thereafter to deal with the Board on this matter?

MR. SWICK: When the Board refused to even answer the Executive Committee letter the matter was taken to the floor of the group which I believe was on April 28th.

MR. WALTON: 1959?

MR. SWICK: 1959, decided to drop the issue by a very close vote — 12 to 11 as I recall.

MR. WALTON: The group voted not to pursue the issue of the Teacher's contracts, is that?

MR. SWICK: That's right.

MR. WALTON: I see. Was that the end of any further effort to work with the Board?

MR. SWICK: No, coming out of that meeting, the 11 people of course, who believed in the NEA principles, felt very strongly, wondered why the 12 people had re-

jected the idea and determined to see the thing through under another organization's banner.

MR. WALTON: Namely?

MR. SWICK: The American Federation of Teachers.

MR. WALTON: Which was formed when?

MR. SWICK: May 4th, 1959.

MR. WALTON: Did the AFT thereafter make any efforts such as these referred to in the paragraph I read?

MR. SWICK: Yes, sir. We made an attempt to reach the Board. The president of our organization made a telephone call to the chairman of the School Board and arrangements were made to meet. I believe the meeting was called for May 16th.

MR. WALTON: Before May 16th was there any dealing between the AFT and the School Board?

[265] MR. SWICK: Oh yes. The School Board Meeting on May 8th was attended by a large number of citizens in Seward. The American Federation of Teachers was present with a spokesman — a paid spokesman in the person of Pat Irvine, an attorney from Anchorage, who represented the American Federation of Teachers, did speak for them and at length did secure the Board's reversal of their previous decision.

MR. WALTON: Now, at this meeting was any mention made of the matters contained in this open letter?

MR. SWICK: Yes, I believe — I was not at that meeting, I hesitate to testify first hand.

MR. WALTON: Very well, I will not ask you to do so.

MR. SWICK: Thank you.

MR. WALTON: Following the May 8th meeting, other than the attempt to meet again with the Board on May 16th, were any efforts made such as those referred to in the paragraph I quoted?

MR. SWICK: I don't recall sir of any effort made between May 8th and the meeting of May 16th which ended in failure also.

MR. WALTON: Was there a meeting on or about May 28th between the AFT and the Board again?

MR. SWICK: After the Board failed to meet with us on May 16th, we did take this action of sending to the Board, and the Superintendent and the Public simultaneously this list of grievances which we had harbored throughout the year.

MR. WALTON: And now, prior to the May 8th meeting, had the AFT made any determination as to whether or not these grievances should be dealt with in a private way or publicly?

MR. SWICK: There was a great deal of discussion among us and we were of one accord that these should be dealt with privately if the Board would listen at all.

MR. WALTON: I see and I take it from the fact that they were published publicly on May 18th, that your efforts to handle these matters privately had failed?

MR. SWICK: Yes, sir — they did fail.

MR. WALTON: And in the course of all these attempts at negotiations did the Board did Mr. Fabricius, or did anyone else on behalf of the Board, ever complain to the AFT, or SDTA that those groups should should first go through the Superintendent.

MR. SWICK: Not to my knowledge.

MR. WALTON: As a matter of fact the AFT was addressed directly in the correspondence by the Seward School Board, was it not?

MR. SWICK: Oh yes.

[266] MR. WALTON: May this piece of paper be marked Appellant's Exhibit — 16.

May I please have it when it has been marked?

Will you please identify Appellant's Exhibit 16?

MR. SWICK: This appears to be a letter signed by the Seward School Board by Tom Howell dated May 18, 1959, addressed to Mr. Walter Blue, Presdent, Seward Local AF of T.

MR. WALTON: May I return to the Open Letter, Board's Exhibit 7. Paragraph 1 on page 1 refers to the illegal non-retention of three teachers, etc. I am going to hand you a copy of Board's Exhibit 7 and I'm going to ask you sir whether or not that paragraph contains any false, distorted or misleading state-

ments. If not, please explain the basis for the statements therein contained?

MR. SWICK: I don't know how it could be any truer.

MR. WALTON: Will you please explain that answer?

MR. SWICK: Well, the teachers were non-retained merely by a letter, I think, dated February 18th which said that the Board had considered them and had decided not to retain them and if they wanted to know why they could come and talk to the Superintendent.

MR. WALTON: The word illegal. What was that intended to refer to?

MR. SWICK: That refers to a Law passed in 1957 which requires the employing Board to furnish a cause within the limits prescribed by law, together with particular items supporting those causes.

MR. WALTON: Namely a Bill of Particulars?

MR. SWICK: A bill of particulars.

MR. WALTON: I direct your attention now to paragraph 2 on page 1, wherein reference is made to the duty of the administration to maintain harmony, and it refers to tension and friction. Will you please state whether or not anything in that paragraph is false, misleading or distroted and if not, state the basis for that paragraph, if you know.

MR. SWICK: Mr. Walton, that's a matter of conclusion. Friction is hard to define or pinpoint as Mr. Burr tried to get the previous witness to do. This document was created by a committee submitted to possibly 18 members of an organization, nearly 2/3 of the teaching staff at the very conclusion of the school year and they authorized us its publication.

MR. WALTON: If there is any particular example that you wish to refer to, please do so. If not, please say so.

[267] MR. SWICK: Well, I can speak only for the pupils, of course, under my control, the students in music. I know my band pupils were frustrated all year, my chorus people were frustrated all year because of an imposition we had to work under. We

were uncertain whether we could attend the Music Festival, finally when we did get the green light on it, we worked very hard and overtime.

MR. WALTON: I believe these matters refer to the subject matter on paragraph 9 on page 2, therefore I refer discussion to that paragraph.

MR. SWICK: I know Mr. Fabricius admitted this in his former testimony. He said there certainly was friction in the school, but he blamed it on the teachers.

MR. WALTON: With respect to paragraph 3? Referring to Board's Exhibit 6, referring generally with non-compliance of Fire Drill Regulations. Can you state whether or not there is anything distorted, misleading, or false about that statement and if not, state what the basis for it is, if you know.

MR. SWICK: No, there's nothing distorted or false about that. Mr. Fabricius himself had admitted that.

MR. WALTON: Has admitted non-compliance with Fire Drill Regulations?

MR. SWICK: Yes, in his testimony.

MR. WALTON: I direct your attention to paragraph 4 on page 1 of Exhibit 7, referring to the ordering of Jesse Moore, the custodian, to do technical, electrical work beyond his skill. Do you know any facts underlying that statement?

MR. SWICK: I know only what Jesse Moore told me as he dictated his statement to me. That dictation took place, I believe, on May 7th, the night before the May 8th School Board meeting.

MR. WALTON: Would this be Appellants Exhibit 18 — 17. Let me hand you Appellants Exhibit 17 and ask you to identify it.

MR. SWICK: Yes, this is my handwriting. This is the statement that Jesse Moore dictated to me.

MR. WALTON: Dictated on or about May 7th, did you say?

MR. SWICK: That's correct.

MR. WALTON: It is written in your handwriting?

MR. SWICK: Yes, sir.

MR. WALTON: Was anyone present when it was written?

MR. SWICK: I believe Mr. Blue was in the room.

MR. WALTON: Is it a literal statement of his words?

MR. SWICK: Yes, sir.

[268] MR. WALTON: Will you please tell the Board generally without reading that statement, what Jesse Moore told you with respect to the matter stated in Paragraph 4 of Board's Exhibit 7?

MR. SWICK: Jesse's statement in general says in December Mr. Fabricius ordered me to perform work on the electronic controls of the furnace. Mr. Moore believes it is contrary to Fire and Electrical codes which requires a qualified electrician. He said I am not qualified to do electrical work of that nature and had been directly ordered by Fire Chief Kielcheski not to do the work, I refused, but was arbitrarily and summarily commanded by Mr. Fabricius to proceed with the work. Apparently he didn't do the work because his next statement says in the meantime Mr. Fabricius did hire a competent electrician to trace out the circuit. When I refused to do the electrical work, Mr. Fabricius ordered me to go to the next Board meeting and then he said that same afternoon, that he wouldn't insist on me attending the Board meeting. I insisted I be allowed to meet with the Board to clarify my duties.. When I met with the Board, I got no satisfaction and no definitions of my duties and I was told only that I must follow the orders of the Superintendent — the amount of time couldn't be limited — that meant his working hours. I asked the Board if they thought I should have done the electrical work after having been ordered not to by the Fire Chief — they gave me no answer. Mr. Jeffrey said it looks like I was not going to get along with the Superintendent so we might as well call it quits and I said that suits me. But before this, Mr. Jeffrey said, it would not be my responsibility if something happened, and they talked about responsibility in the furnace room. They talked about comments of other citizens present and he summarized by saying I felt qualified to operate the furnace but

not to repair it, as many good motorists are not repairmen. And this is his conclusion of Mr. Fabricius' attitude — he says his arbitrary and authoritative manner creates an atmosphere of unpleasant and unsatisfactory working conditions and he adds this afterthought. On Saturday morning of the fire inspection Mr. Fabricius was alleged to have said "you can't bring labor rights into a school. You have no more rights as to time and duties then the teachers and they have none".

MR. WALTON: And did he sign that statement?

MR. SWICK: He did not.

MR. WALTON: Why did he not?

MR. SWICK: We didn't ask him to.

MR. WALTON: Why did you not?

MR. SWICK: At that time Mr. Walton we were not anticipating a court trial over this. We were merely trying to get statements of people who witnesses these things so that we would not be going out on a limb in asking that these conditions be corrected.

[269] MR. WALTON: The purpose of his statement was in fact, was it not, to support the matters which you intended to bring to the Board's attention.

MR. SWICK: Yes. This has been a matter of quite some talk in the Grade School to which Mr. Fabricius had already alluded to and we wanted to find out first hand, rather than listen to gossip, so we got it first hand from the person to whom it happened.

MR. WALTON: May I direct your attention to Paragraph 5, Board's Exhibit 7 and I ask you Mr. Swick, if you have ever heard anything stated such as, or similar to the remarks therein attributed to Mr. Fabricius and whether or not if you can testify to any other matters supporting that paragraph?

MR. SWICK: I never heard the words that are in this quotation mark, but there was an apparent attempt to purge the faculty, I realized that the first week when Mr. Condor's head rolled, but I didn't realize it was going to the extent of janitors, secretaries and all other types of help too, and least of all to me.

MR. WALTON: Have you, yourself, ever heard Mr. Fabricius say anything similar to the words there attributed to him?

MR. SWICK: He referred one time in his office of getting rid of some of the deadwood and he nodded upstairs in this building. One time he called me into Mr. Frampton's office in the spring after I had been circulating a document that was to be used for the basis of a charter application of the American Federation of Teachers, and he called me in and we discussed a rumor to the effect that I was circulating a petition to get rid of him, which seemed to indicate some sort of complex on his part.

MR. WALTON: You say he asked if you were circulating a petition to get rid of him?

MR. SWICK: Well, he said, I hear you're circulating a petition to get rid of me and I said, who told you that and he said, that doesn't matter who told me that and I said then I refuse to comment on it until I can face my accuser. And he said, well it's right, isn't it and I said no, as a matter of fact, it is not correct. And he said, Swick, you know, I've had good reasons for the things I've done here this year, and I said, I'm sure you have Mr. Fabricius, it's just that we'd all like to know about them and Friday night, this was about May 4th this conversation took place, and I was referring to the May 8th meeting, Friday night I said, you'll have an opportunity to tell the whole Seward public what your reasons have been. And he said, when we opened the doors, you know I may go down the road over this, Swick, but I'll take a lot of you with me. And with that, the conversation ended.

MR. WALTON: I direct your attention to paragraph 6 of Board's Exhibit 7, generally referring to a provoked resignation of an outstanding teacher by forbidding him to ride in a school bus, apparently in violation of a rule and regulation. Who is, do you know who the teacher there referred to is?

[270] MR. SWICK: Yes, sir, that refers to Jack Conder.

MR. WALTON: Tell us something about his qualities as a teacher?

MR. SWICK: Well, I had only worked with Jack one year — that was '57-58, under Mr. Carlson. I got the impression that Jack was an extraordinary person. He was short of stature but he was a giant in creative ability. He had the additional ability to transmit the desire to create among the children. The little kids right up to the very difficult Junior High age responded to Jack in what I considered just an extraordinary manner. I'm sure that the many, many parents in town still remember the cute little projects, art projects, excellent work that their children brought home. I was particularly impressed also with the way he assembled and organized, produced a play among the adults in town, he organized a dramatic group which put on the Wilder play "Our Town" in which Mrs: Skinner, currently of the Board, played a very fine part. Mr. Condor was temperamental as some artists are, he tends to be outspoken, he tends to speak his mind. I did not feel that that had any effect whatsoever with classroom activities and his efficiency in the classroom.

MR. WALTON: What do you know about this alleged provoked resignation?

MR. SWICK: Again, all I know is what Jack told me. He came down to my house for lunch that day that he had been resigned, and he told me the details of it. He had been told the previous week — this was Monday morning following the Tuesday on which school started — it would be the 5th school day of the year.

MR. WALTON: 1958?

MR. SWICK: 1958. And the bus schedule were in a state of flux and Mr. Fabricius apparently for some reason had ordered him not — ordered him, no one else, apparently, not to ride the bus, and Mr. Condor rode the bus anyhow on Monday morning because the bus schedule had changed to get him in to school before the 8:30 deadline. Now, he couldn't understand why then Mr. Fabricius had ordered him not to ride the bus when he was still, when under the new schedule he would get to work on time. So as I understand it, he called Mr. Fabricius to get the matter straight-

ened out from the Grade School and Mr. Fabricius then came over to the Grade School from the High School arrving here about 9 o'clock, sent Mr. Frampton down to get Mr. Condor out of the Art Room, Mr. Condor went up to the office and the conversation ensued which is a matter of record.

MR. WALTON: That's the conversation, isn't it, where the secretary was standing by and transcribed — rather took shorthand notes on what was being said by everyone all the time?

MR. SWICK: Mr. Condor told me that day at lunch that Mr. Fabricius had ordered her to take the notes.

MR. WALTON: Do you know whether or not any of your conversation with Mr. Fabricius were ever taken down in shorthand?

MR. SWICK: Pardon?

[271] MR. WALTON: No, just taken down in shorthand.

MR. SWICK: I couldn't say as to that — they might have tried it.

MR. WALTON: In Paragraph 6 of this Board's Exhibit, I see that the word seems is underlined. In what seems to be a violation of the intent of certain rules and regulations. I might say that this is going to be marked Appellants Exhibit 18. I direct your attention to page 13 of Board's Exhibit 18 and ask you if you can please tell the Board why the word "seems" was stated in that paragraph?

MR. BURR: Can I have for the record an identification of the Exhibit?

MR. WALTON: Yes, Appellant's Exhibit 18.

MR. BURR: What is it?

MR. WALTON: Oh yes, excuse me, sir, thank you.

MR. SWICK: Do you want me to read the front cover, Mr. Walton?

MR. WALTON: No, just identify it.

MR. SWICK: It's a manual for school bus transportation, rules and regulations of the Territorial Board of Education, laws of the territory of Alaska effecting school transportation issued by the territorial Department of Education, as of March 1, 1954.

MR. WALTON: Were you instrumental in the drafting of paragraph 6 of the Board's Exhibit 7?

MR. SWICK: I don't recall at this time what part, if any, that I had of the composition of any of these paragraphs.

MR. WALTON; Can you explain to the Board now why Mr. Fabnicius action with respect to Mr. Conder appeared to be in violation of the regulations?

MR. SWICK: This is one I really would hate to go to court on. Paragraph 31 says, all negative, drivers must not haul any persons who is not a pupil of the school, a teacher or an employee of the school, without the written consent of the school authority. We in our humble way interpreted that to mean that drivers may haul any persons who is a pupil, a teacher, or an employee of the school without the written consent of the school authority.

MR. WALTON: Well, you recognize that there was a question of the proper interpretation of that regulation?

MR. SWICK: We felt that the problem could certainly have been worked out without a big lawsuit within the first week of school, yes.

MR. WALTON: Now, I direct your attention to paragraph 7 of Board's Exhibit 7, referring generally to the dictatorial treatment of teachers forcing them into a choice of submitting and taking it at a loss of personal dignity, or fighting back a public spectacle. Would you care to state to the Board what in fact prompted the preparation of that paragraph?

[272] MR. SWICK: Well, specifically there was the Jerry Smith incident, there was the Jack Conder incident, there was the drawn out Jesse Moore incident that had happened, of course, the pattern has not changed, the record will show that the people who have not suffered loss of dignity have either left town or are presently in town and unemployed.

MR. WALTON: Would you please direct your attention to paragraph 8 of Board's Exhibit 7 which refers generally to a peremptory and threatening manner of speaking in the presence of pupils to Mr. Smith.

MR. SWICK: Yes, I did not personally witness that — I know that Mr. Smith did write Mr. Blue a statement to be released at the discretion of the American Federation Teachers and I believe we have that statement.

MR. WALTON: Very well. We will let Mr. Blue testify on that. Directing your attention to paragraph 9 of Board's Exhibit 7 referring to alleged defaults in educational leadership, sub-paragraph a, in neglecting to permit the development of a proper music program. Can that statement be substantiated, Mr. Swick?

MR. SWICK: As I was the teacher of what music program we had, yes, I would be the one that was closest to that. Early in the year Mr. Fabricius set a policy of segregation of the Grade School and High School pupils as far as Band and Chorus work was concerned. It happened that year that I had only 8 holdover members in the High School Band. I did have a rather healthy group coming up though in the upper grades, I think I had about 15 or 16 kids playing, which combined would make a 24 or 25 piece band which would be sufficient to rehearse, it would have enough instrumentation that it would sound like a band. The kids could be interested in it we could go ahead and play and perform and of course that is the essence of a band program. Mr. Fabricius philosophy however differed almost a 180 degrees, he felt that the music program should be confined to small groups, or even individual lessons, and that the playing together was not necessary to a good music program. The music program was in the doldrums as a result of this. I asked him one time why he objected to bringing the Grade School pupils over to the Armory to play — his response was that he didn't believe in mixing the little children with the High School children and that they learned soon enough anyway. And I said to him that the High School children that I had in my band were of high calibre, they were the sons and daughters of 4 of the Board Members I recall at that time. That apparently didn't make any

difference. He complained about the weather — it would to big an imposition for the kids to walk the 2-1/2-3 blocks from the Grade School and he found all sorts of excuses for not allowing the Band to become a band.

MR. WALTON: Can you in any way explain any information substantiating subparagraph b of paragraph 9 of Board's Exhibit 7 pertaining to be a Drama Festival?

MR. SWICK: Not the first part, although I had heard that the school had done real well up in Palavir the previous year, yes, sir, that's hearsay.

MR. WALTON: And I take it that with respect to sub-paragraph c of paragraph 9 you have — do you have to add anything with respect to that paragraph to which you have already testified? Do you wish to supplement [273] your previous testimony in any way in response to the following question, can sub-paragraph c be substantiated?

MR. SWICK: I believe not, I think if we get the letter that Mr. Condor wrote to the Board into the record on the day of his resignation, or the day following it, I think we get Mr. Smith's statement into the record, I think we will have a fairly complete picture there for the State Board. As far as passing the value of judgment on a definite contribution, modesty precludes me from testifying on myself but the other two I can certainly testify in a positive way on that.

MR. WALTON: Let me hand you a document which I am marking Appellant's Exhibit 19. Will you please identify it?

MR. SWICK: This is a statement dated May 11th — or rather it's a letter from Jerome C. Smith, dated May 11, 1959 to Walter F. Blue, American Federation of Teachers.

MR. WALTON: Now, Mr. Swick, Mrs. Davis has testified with respect to paragraph 10, will you please direct your attention to the paragraphs following on page 2. You have already testified with respect to the first paragraph referring to previous efforts?

MR. SWICK: Yes, sir.

MR. WALTON: Is there anything false, misleading or distorted in about the following paragraph, starting with the words, On May 8th?

MR. SWICK: I'll repeat, I was not at that meeting. I heard that that statement had been made. I would rather have someone — there were 200 people at that meeting — perhaps someone could testify to that.

MR. WALTON: Very well. I take it that would also be your answer to the following paragraph starting with the words "at this time"?

MR. SWICK: Yes, sir.

I know what the positions of the union was as we went into that meeting.

MR. WALTON: What was the position of the Union with respect to withholding information from public distribution?

MR. SWICK: This was 4 days before commencement — the high spot of the graduates year — in many respects the high spot of the school year. The American Federation of Teachers Local in its effort to keep this friction — the American Federation of Teachers in an effort to keep the publicity and the fanfare down to a very minimum and yet secure the major points, that is the contracts for the three non-retained teachers, had instructed its attorney, Pat Ervine, not to use this material in public.

MR. WALTON: By this material, you are referring to what?

[274] MR. SWICK: I am referring to the items which were later incorporated into this so-called Open Letter, with exception of paragraph 9 and 3, I guess — excuse me, that is number 8, that is all the items except those referring to Mr. Smith and Mr. Swick.

MR. WALTON: You say Mr. Ervine was instructed not to do what?

MR. SWICK: Mr. Ervine had been instructed by our local not to make these matters public except as last resort.

MR. WALTON: Was he instructed to attempt to negotiate with the Board concerning the other matters in Board's Exhibit 7?

MR. SWICK: He was instructed to negotiate with the Board concerning the non-retention of the 4 teachers and the extension of time to be allowed to get education — to satisfy the Board's newly imposed educational requirements — those two items.

MR. WALTON: Was he given a written list of the matters which are there in Board's Exhibit 7, less the Swick and Smith material?

MR. SWICK: He was.

MR. WALTON: The next paragraph on page 2 of Board's Exhibit 7 states generally that the AFT invited the Board to meet with it privately?

MR. SWICK: That is true.

MR. WALTON: The meeting time was fixed to suit the convenience of the Board?

MR. SWICK: I believe that is correct.

MR. WALTON: And the meeting time was when?

MR. SWICK: May 16.

MR. WALTON: 19.

MR. SWICK: 1959.

MR. WALTON: The following paragraph states Mr. Howell, President, appeared but no one else appeard on behalf of the Board? Is that correct?

MR. SWICK: That is correct.

MR. WALTON: Were you there at the May 16th meeting?

MR. SWICK: I was.

MR. WALTON: Did Mr. Howell explain why the other members did not appear?

MR. SWICK: I believe he said something about refusing to meet until they had an attorney present which we felt was a little strained and unusual for a group of neighbors in a small town, having to have an attorney to meet with them. I still do.

[275] MR. WALTON: I believe the rest of Board's Exhibit 7 contains a list of requests does it not?

MR. SWICK: Yes, sir.

MR. WALTON: Is there anything false, misleading, distorting about these requests?

MR. SWICK: I don't know how you could distort a request.

MR. WALTON: Now, the Appellants in this case, Mr. Swick, were also charged with having carried to the people of the community of Seward, a petition seeking the recall of the School Board on charges that could not be substantiated and were false. I have marked that Appellants Exhibit 20 and I would like to ask the witness to identify it. It consists of 3 pages.

MR. SWICK: Yes, the white page is entitled Explanation of Grounds, which we attached to the inside cover of the Petition Folder, it listed the causes or the grounds for this recall action as Nonfeasance in office, then we defined it for them, for the signors, as a neglect of some act required in a legal duty and under that we have listed three failures to follow laws and our second ground was Failure to Uphold ones Oath of Office.

MR. WALTON: Mr. Burr, I believe that you have a copy. I believe you introduced it as a Exhibit at the preceding meeting, but I'd still like to mark this Exhibit 20.

Now, Mr. Swick, with respect to Nonfeasance in office, I believe that the petition cited 3 examples, did it not?

MR. SWICK: I believe so.

MR. WALTON: And will you please state what the first example of alleged nonfeasance in office was?

MR. SWICK: Yes, it's based on the Board's failure to insure the Fire Drill Laws, SLA-37-2-55 to be enforced.

MR. WALTON: Mr. Swick, is that statement, in your opinion, true or false?

MR. SWICK: I've heard Mr. Fabricius say it's true.

MR. WALTON: What was the second ground stated in the petition for the alleged non-feasance of the Board?

MR. SWICK: We alleged that the Board failed to issue 4 contracts from March 19th to May 8th, as required by Section 138, Chapter 5 of SLA 1957.

MR. WALTON: Which four contracts were those?

MR. SWICK: These were the contracts which should have gone to Armstrong, Svedlund, Hollenbeck and Charles Brown.

MR. WALTON: I believe you have already testified, have you not, that the Board did not issue those until the May 8th meeting?

[276] MR. WALTON: What is the third ground for alleged non-feasance?

MR. SWICK: The Board failed to provide for a public inspection of records and files of the Board at a reasonable time. To wit, Friday, May 27th, 1959, at the hour of 10:20 A.M., as required by SLA 37-3-37, which states "that all records and files of public school board shall be open to inspection by the public at all reasonable times.

MR. WALTON: Do you yourself have knowledge of any facts supporting that statement?

MR. SWICK: Yes, sir.

MR. WALTON: Please state the same.

MR. SWICK: The morning of May 29th, following the May 28th meeting at which the Board did meet legally at last, and properly, and everything was presumably in order with our Union, The American Federation of Teachers, represented by Mr. Watts. Mr. Watts reported again, no progress and we were committed by action of our group that should this meeting fail, we would institute recall action. So, the next morning, in preparing to institute the recall action, I approached the place where the records are kept, namely the High School Office, Mr. Fabricius was in charge. I made the request to inspect the School Board Minutes and after taking a tongue lashing for a few minutes, I was told to get out and I asked, does that mean you refuse to allow me to inspect the public record. And he said, it does, and I went down to the Post Office where I saw the President of the Board, Mr. Tom Howell, told him what had happened, asked him if he wanted to order his employees up here to make these records available and he stammered a little and said, well, the way

functioned as a teacher since the Spring of 1959 in the Seward Schools?

MR. SWICK: That is correct.

MR. WALTON: Mr. Swick, these appellants have also been charged with having engaged in clandestine activities and I believe that some reference there is made to their association with yourself. Do you know, whether or not, the appellants have been engaged during the school year of 1958-59 in clandestine activities?

MR. SWICK: I would have to have a definition of that, sir?

MR. WALTON: Well, let's take Mr. Fabricius definition — a meeting to which he was not invited.

MR. SWICK: Yes, sir, I'm sure that they've engaged in many meetings of that nature.

MR. WALTON: Were you present on those occasions?

MR. SWICK: I may have been present at some of them.

MR. WALTON: We might take Mr. Burr's definitions — a meeting of which the Board does not have full knowledge. Do you know whether or not these appellants engaged in such meetings?

MR. SWICK: I can't possibly know what the Board knows.

MR. WALTON: Is it likely, Mr. Swick, that these appellants have in your presence engaged in such meetings?

MR. SWICK: It is quite possible.

MR. WALTON: As a matter of fact, did the AFT make a policy of advising the Board of all of its meetings?

MR. SWICK: We did not — we do not.

MR. WALTON: Do you know of any rule or regulation according to which it is required to?

MR. SWICK: I do not.

MR. WALTON: Mr. Swick,

MR. SWICK: Is it out of place this time, Mr. Walton, to point out that the School Board which might be called clandestine which we think perhaps is even

more out of line than a Union holding a meeting, because they are sitting and spending public funds and there are laws against School Boards holding so-called Executive Sessions without going through the channels provided by law. And when you call that to [279] their attention, still the meetings go on.

MR. WALTON: In summary, Mr. Swick, have you any reason to believe that these appellants by circulating a petition for recall of Board members, or by circulating Board's Exhibit 7, tended to disgrace them and the teacher's profession and bring them into public disrespect, or the teaching profession?

MR. SWICK: Mr. Walton, it's my firm conviction that it's possible people like the Appellants who will save this profession from the public disrespect.

MR. WALTON: Why do you say that?

MR. SWICK: I say that because if we allow this sort of administration to continue without questioning it, we are just as guilty as the people who support it we therefore stirred up after every possible channel was exhausted, ethical channel, we finally had to make the situation known to the public. The public was already aware of it — they had continued to be aware of it — the town was split wide open as the testimony last night contained, and if people don't — if people who are inside and know the situation will not stand up and tell the facts, then the situation is going to continue, continue, continue. There will be no other choice, no other hope for the future of education.

MR. WALTON: I have no other questions.

MR. CASEY: I will call a 10 minute recess — 10:25 PM. Reconvened at 10:40 PM.

The meeting will be reconvened.

MR. BURR: Mr. Swick, I gather from the sum and substance of your testimony taken as a whole, that you are now and have been for some period of time dissatisfied with Seward School System in many respects?

MR. SWICK: That's true.

MR. BURR: And would you be able to particularize

that as being primarily in the area of the Superintendent of Public Schools?

MR. SWICK: I would.

MR. BURR: Would it have anything to do with the Seward School Board as such?

MR. SWICK: Only in that I feel they have been mislead by this man.

MR. BURR: You feel that they have been controlled?

MR. SWICK: Technically, no superintendent can control a School Board.

MR. BURR: Wherein lies the reference, then?

MR. SWICK: I believe from the personality of the Superintendent, yes, sir.

MR. BURR: Would it be fair to state, Mr. Swick, that the complaints that you have so very carefully enumerated in your direct examination, to be basically the same complaints that were voiced in the Bill of [280] Particulars published by your local and also made the subject of the recall petition which was circulated in the City of Seward?

MR. SWICK: Would you state that again, please?

MR. BURR: Would it be fair to state that the complaints that you have enumerated in your direct examination, about the Superintendent and the School Board — would it be fair to state that those complaints are basically the same complaints that you were complaining of, or the local was complaining of in the Spring of 1959, and also the complaints which were made the subject of petition for recall?

MR. SWICK: Yes, sir.

MR. BURR: And would it be also fair to state that these complaints being made the subject of a recall election, which ultimately was held, were determined by the electorate of the town of Seward?

MR. SWICK: I'm sorry, I didn't follow that.

MR. BURR: Well, would it be fair to state then that the complaints which were the basis for and the substance of the recall election of the School Board members, were determined by the electorate of the City of Seward?

MR. SWICK: Yes, sir, I guess so.

MR. BURR: Well, are you not then, Mr. Swick, beating a dead horse, at this time by voicing the same complaints?

MR. SWICK: No, sir.

MR. BURR: Will you explain why.

MR. SWICK: I was asked a question about why we published the Open Letter and I answered that.

MR. BURR: Do you not feel at this time that the people of Seward having had these complaints placed before them in the public form of a common election. Don't you feel that the City of Seward has voiced an opinion as to the validity of the charges that you have complained of?

MR. SWICK: Not necessarily.

MR. BURR: How many of the School Board members were recalled, Mr. Swick?

MR. SWICK: None that I knew of.

MR. BURR: When did you become active in the American Federation of Teachers?

MR. SWICK: At it's inception, May 4th, 1959.

MR. BURR: Were you a member of the AFT prior to that?

MR. SWICK: No, sir.

[281] MR. BURR: I should like this Exhibit marked as the next Board Exhibit, please.

I should like to hand you Board's Exhibit 20 for identification. And ask you whether or not you have seen that Exhibit before?

MR. SWICK: No, sir, I haven't.

MR. BURR: Nor a similar exhibit?

MR. SWICK: No, sir, I have not.

MR. BURR: Have you made any application in any school system beside Seward since the month of September, 1960?

MR. SWICK: No, sir, I have not.

MR. BURR: You don't know as a matter of fact whether there is any ill effect resulting from your relationship with the Seward School Board and the Seward School Superintendent?

MR. SWICK: Yes, sir, I do.

MR. BURR: Will you tell me how you have ascertained that?

MR. SWICK: Yes, sir. Following the Fishing Season in 1959, I approached the Clerk of the Board at Saldovia, Mrs. English, who is the Post Mistress over there and asked her if the position of Superintendent had been straightened out yet so that I might properly and ethically apply for that position. She was rather abrupt with me — she said, Mr. Swick, we're going to be very careful about who we consider for any teaching positions, what with Teacher's Unions, and Tenure Laws. She said, School Boards don't have a chance to run the schools any more and she was rather short, as I say, and turned on her heels and walked away from me.

MR. BURR: Have you talked with any other representatives of the school system — of a school system?

MR. SWICK: Yes, sir, I went to see Merrill Hatcher, who is representative for the State Department in Anchorage office about employment that Fall on the Kenai where they were short of teachers and he gave me an application blank and told me that the Band position in Kenai was available. I made application to the Commissioner's Office in Juneau, I waited a couple of weeks and got no reply. Went back and saw Mr. Hatcher in Anchorage and asked him if it was the policy of the Department to answer applications, or at least acknowledge receipt of them and he said, that yes yes it was and that I should have heard, but he had a phone conversation with Juneau in very recent past and that he happened to know that I was not to get that appointment or any other.

MR. BURR: Do you still have a valid teaching certificate?

MR. SWICK: I do, sir.

MR. BURR: But you have not, in fact, made application to any other School System for a position of employment, have you Mr. Swick?

[282] MR. SWICK: None other than Seldovia and the State.

MR. BURR: Did you make an application in writing to Seldovia?

MR. SWICK: I did, sir.

MR. BURR: What was the result of that?

MR. SWICK: Negative.

MR. BURR: Did they give you any reason for it in writing?

MR. SWICK: Yes, sir. They said that they had moved one of their local men up to the Acting position of Superintendent.

MR. BURR: Thus filling the vacancy.

MR. SWICK: Presumably, yes, sir.

MR. BURR: But no reference was made to your background, was it, Mr. Swick?

MR. SWICK: In their reply? No.

MR. BURR: You have a fairly poor opinion of the present Superintendent of Schools in Seward, do you not, Mr. Swick?

MR. SWICK: You have to define that, sir.

MR. BURR: A poor, professional opinion.

MR. SWICK: Yes, sir.

MR. BURR: And you have entertained this opinion for some period of time?

MR. SWICK: It was a growing thing with me, sir, during the years '58-59.

MR. BURR: Was it good to start with?

MR. SWICK: It was.

MR. BURR: Was it superior to start with?

MR. SWICK: It was completely neutral. I knew nothing about the man when he came to Seward.

MR. BURR: You do give the man that you are not familiar with the benefit of doubt?

MR. SWICK: Certainly.

MR. BURR: Until you know otherwise?

MR. SWICK: Absolutely.

MR. BURR: When it did it first come to your attention that Mr. Fabricius was [283] not wholly satisfactory in your opinion?

MR. SWICK: Was not wholly satisfactory?

MR. BURR: As a Superintendent.

MR. SWICK: I was shocked when Jack Condof was

forced into resigning the first week of school. I felt that probably there was something behind the thing that I couldn't see — that was apparent, because this seemed to be, to me, very drastic action for riding a school bus.

MR. BURR: Do you know what insubordination means, Mr. Swick?

MR. SWICK: Yes.

MR. BURR: Do you believe in insubordination, as you understand the term, to be sufficient grounds for encouraging the dismissal of a school teacher?

MR. SWICK: For encouraging the dismissal?

MR. BURR: Well, let's say, encouraging the resignation of a school teacher? Let me rephrase the question. If you were Superintendent of the Seward Schools, would you tolerate insubordination of a school teacher under your jurisdiction, Mr. Swick?

MR. SWICK: I would not.

MR. BURR: Would you say that it is true that after you've formed your opinion of Mr. Fabricius and that it was adverse, sometime after the Fall of 1959, that you set about with other individuals, and specifically, Mr. Blue and Mr. Watts, on a course of action which you hoped, at least hoped, would accomplish the removal of Mr. Fabricius?

MR. SWICK: From the Seward School System? It is not within the province of any teacher, any professional person to attempt to remove any other professional person. It is wholly within that person's province, and actually, I believe, it is his obligation to bring pertinent facts to the proper employing agency, which we attempted to do with the local Seward School Board, yes, sir.

MR. BURR: I don't think you understood my question. Did you, together with other individuals that I have named, either as members of the AFT, or members of any other group, or individually, devise and set about and set upon a plan or a course of action which you hoped would accomplish the removal of Mr. Fabricius?

MR. SWICK: Not necessarily, sir.

MR. BURR: So the statement is not true that was not your objective?

MR. SWICK: No, sir, I have never said that, nor has the American Federation of Teachers ever said that or even implied it.

MR. BURR: Well, are you saying, that what I have said is not accurate?

MR. SWICK: You mean your question?

[284] MR. BURR: Yes.

MR. SWICK: Of course not.

MR. BURR: So you did not have that objective in mind?

MR. SWICK: No, sir.

MR. BURR: And you did not have that objective in mind when you prepared and caused to be prepared Exhibit 7, Board's Exhibit 7, which you have carefully defined and examined?

MR. SWICK: No, sir.

MR. BURR: It was not your objective in the preparation of this document, or the assistance of the preparation of to bring Mr. Fabricius into public disgrace in the town of Seward?

MR. SWICK: No, sir.

MR. BURR: And you had no such objective in mind when you caused this to be publicly distributed to the citizenry of Seward?

MR. SWICK: No, sir.

MR. BURR: Did you, at the time of distribution of Exhibit 7 to the public, believe that the public at large could remedy the situation, short of a recall election?

MR. SWICK: Yes, sir.

MR. BURR: And what course of action did you propose that the public at large could do to remedy what you have set forth in Exhibit 7?

MR. SWICK: Mr. Burr, since we had failed to make contact with the Board, we felt that by making this information available to the rest of the public, that perhaps some of their friends that they would listen to, would get them to examine the truth of the statements and perhaps take appropriate action such as we asked on page 3, namely, that they would de-

mand immediate guaranteed and substantial improvement in the administrative policies, and we outlined them there. There's nothing wrong with that.

MR. BURR: Do you believe in an orderly democratic process of presenting grievences to public bodies?

MR. SWICK: Yes, sir.

MR. BURR: Is it your testimony that you did everything within the bounds of the law to spread out and bring to the attention of the public body the complaints that you have outlined in Exhibit 7?

MR. SWICK: Not only within the bounds of the law, but that was within the bounds of the ethics of the profession.

[285] MR. BURR: But you didn't seek a recall prior to distributing this information to the public?

MR. SWICK: No, sir.

MR. BURR: As a matter of fact, this antedates some period of time, the circulation of the petition for recall. I'm referring to Exhibit 7?

MR. SWICK: That is true.

MR. BURR: Isn't it true, Mr. Swick, that in lieu of bringing this matter to the public, that you had a more obvious purpose of embarassing the members of the School Board and the Superintendent in the eyes of the public?

MR. SWICK: Not necessarily, sir.

MR. BURR: By that you mean that was one of your objectives?

MR. SWICK: No, sir.

MR. BURR: Then it was not one of your objectives?

MR. SWICK: No, sir. If they could have explained all of these matters to the satisfaction of ordinary thinking people, that certainly was their prerogative and their privilege and their duty as school board members.

MR. BURR: You had no desire by the distribution of Exhibit 7 to embarass Mr. Fabricius in the eyes of the public, and the school board by the distribution of Exhibit 7?

MR. SWICK: That was not our purpose, sir.

MR. BURR: That was not your purpose. You have a Master's Degree in Education?

MR. SWICK: I have.

MR. BURR: And are you telling me that paragraph 5 of Exhibit 7 which says and I quote "on different occasions threatening to get one third of the faculty this year and half of the remainder next year". Are you telling me, Mr. Swick, that was not designed to embarass Mr. Fabricius?

MR. SWICK: We didn't say that, we were reporting Mr. Fabricius as saying that.

MR. BURR: Repeating a falsehood is just as bad ad devising it, Mr. Swick.

MR. WALTON: Objection. There is nothing in this record to warrant that question. He presumes that it is false — there's ample testimony that it is true.

MR. BURR: Are you telling me that if this were true, that you had no desire to embarrass Mr. Fabricius by distributing this garbage in public form in Seward? Is that your testimony, Mr. Swick? You with a Master's Degree in Education?

MR. SWICK: Will you repeat that please?

MR. BURR: Can you read it back to him? His memory is remarkably short when he wants it to be.

[286] MR. WALTON: I'm going to object to the use of the word "garbage" — I don't think we're down to that level — I think he can talk —

MR. BURR: I think we are — I'll correct you, Mr. Walton.

MR. WALTON: No, I don't think we are. Mr. Chairman, I ask that word be deleted from the question — it's an attempt to antagonize and argue with the witness.

MR. BURR: All right — you needn't answer the question.

MR. WALTON: I request that the witness be given an opportunity to answer it, subject to my request that that word be stricken.

MR. CASEY: The word garbage — is that what you're objecting to?

MR. WALTON: Yes, sir.

MR. BURR: Can you propose a suitable substitution, Mr. Walton?

MR. WALTON: It's your question, Mr. Burr.

MR. CASEY: Would you strike the word garbage, please.

MR. BURR: Let's use the word gossip, then.

MR. WALTON: I'll move to strike the word, gossip. There's nothing in here to show that this isn't true. There's nothing here to show that it is just gossip. Why don't you just say "this statement".

MR. BURR: I'll propose my question — you propose yours.

MR. WALTON: I'll object to yours.

MR. BURR: Well, your objection is noted — let's proceed with this hearing. Give him a ruling.

MR. CASEY: Objection overruled. Go ahead.

MR. WALTON: Excuse, I believe the young lady was going to read the question back.

MR. BURR: Do you want me to restate the question, Mr. Swick?

MR. SWICK: If you will.

MR. BURR: Is it your testimony, and do you want this Board to believe, you under oath, that what I have just read from paragraph 5 of Exhibit 7, which appears to be a quote of somebody, specifically Mr. Fabricius, do you want the Board to believe that a publication of that statement was not designed to embarass him in the eyes of the public of Seward?

MR. SWICK: No, sir, it was not designed for that purpose. If it had the side effect of doing that, that was an unfortunate occurrence, that's something we had no control over.

[287] MR. BURR: It was an unfortunate occurrence that you didn't object to, though, wasn't it?

MR. SWICK: I voted to publish the letter.

MR. BURR: Thank you. You mentioned that you were one of the organizers of the Seward Local of the AFT, is that right?

MR. SWICK: I don't know that I mentioned it, but I was.

MR. BURR: Were you a charter member of this local?

MR. SWICK: I was.

MR. BURR: And are you still a member?

MR. SWICK: I am.

MR. BURR: Is this affiliated with the American Federation of Labor?

MR. SWICK: It is.

MR. BURR: Who's the President of the AF of L, CIO?

MR. SWICK: George Meany? I'm not even sure about that, sir. I think it's George Meany.

MR. BURR: Do you believe —you don't have to answer this if you don't think it's a fair question, Mr. Swick — but do you believe that organized labor has a place in public education?

MR. SWICK: Yes, I do.

MR. BURR: Do you believe that teachers as a professional group, should be subject to the AFL-CIO, in every aspect?

MR. SWICK: Should be subject to it?

MR. BURR: Subject to it as a local of the parent union.

MR. SWICK: You'd have to be more specific than that.

MR. BURR: The teachers are considered to be a professional group, are they not?

MR. SWICK: By some of us, yes, sir.

MR. BURR: Well, they are generally recognized as professional people, aren't they?

MR. SWICK: I believe so.

MR. BURR: Do you consider — are you of the opinion, Mr. Swick, that professional people should be organized in the same manner that other callings should be — less professional ones.

MR. SWICK: Yes, if they prefer the organization, yes, sir.

MR. BURR: Do you prefer it?

[288] MR. SWICK: I do, sir.

MR. BURR: How many of the school teachers in the Seward System right now, are members of the AFL-CIO Local?

MR. SWICK: Very few, sir.

MR. BURR: Yourself, and the two respondents, and how many others?

MR. SWICK: Of course our position in the Seward School System, is under question, isn't it?

MR. BURR: Are you still trying to organize the teachers in the local of the Seward School System, Mr. Swick?

MR. SWICK: No, sir.

MR. BURR: That is not one of your objectives?

MR. SWICK: Not at the present time, no, sir.

MR. BURR: Well, is it at a future date?

MR. SWICK: Perhaps, sir.

MR. BURR: Well, then I'm assuming that it's a fair statement that you believe they should be organized?

MR. SWICK: I believe they should have the opportunity to join any professional group, they please.

MR. BURR: Have you not tried to proselyte the teachers in the System at this time? Into joining? Let me rephrase it. Have you not solicited their membership?

MR. SWICK: No, sir.

MR. BURR: No? Why not?

MR. SWICK: We feel it would be unfair to the teachers under this administration to ask them to line up in a situation that would undoubtedly result in the same thing that has happened to the other AFT members.

MR. BURR: And that is what?

MR. SWICK: On, dismissals, forced resignations, leaving in disgust, you have their resignations on file, no doubt.

MR. BURR: What is the objective of the Teacher's Local of the AFT?

MR. SWICK: Which Teacher's Local, sir?

MR. BURR: What would you categorize — what would you say — I don't want you to categorize and be general — what would you say was the end objective of the organized AFT Local in Seward? What is the overall objective?

[289] MR. SWICK: The final objective or the immediate objective?

MR. BURR: The final objective.

MR. SWICK: Is to restore — we had several of course objectives which perhaps might even vary from time to time, but our immediate objective is to get substantial improvement in administrative personnel policies, as outlined on page 3 of our Open Letter.

MR. BURR: Do you consider the teachers if they were organized in this manner, should also have the right to strike, which is commonly recognized in labor groups?

MR. SWICK: That's a problem that I haven't — that I'm holding an open mind on like the School Board is on this hearing, and I'm going to reserve judgment on that, sir, for the time being.

MR. BURR: You have no opinion?

MR. SWICK: I know that school teachers have struck both under the AFT and under the NEA, at various places and times in our history. I note that there's one going on in New York right now.

MR. BURR: It's recently been called off, hasn't it?

MR. SWICK: I haven't seen that.

MR. BURR: Do you subscribe to this philosophy of organized labor amongst teachers?

MR. SWICK: The philosophy that teachers may join organized labor?

MR. BURR: And strike?

MR. SWICK: And strike, I told you I'm holding an open mind on that.

MR. BURR: Would you say that the American Federation of Teachers generally, as far as you know, subscribe to this as a privilege of a group?

MR. SWICK: I don't think our national charter prohibits the strike as an ultimate weapon. I don't know that it encourages it.

MR. BURR: It doesn't prohibit that?

MR. SWICK: No, I'm sure that it doesn't.

MR. BURR: You're not sure that you even subscribe to that if it were justified?

MR. SWICK: That's true.

MR. BURR: In your direct testimony, Mr. Walton, asked you if as far as you knew there was anything in Exhibit 7, Board's Exhibit 7, that was false and your answer was, according to my notes, that nothing within your knowledge was false. Do you remember that?

MR. SWICK: That's right, sir.

[290] MR. BURR: By that do you mean that there's a possibility that some of this information would be false, or inaccurate or incomplete?

MR. SWICK: This information is just as good as the word of the people who gave it to us directly.

MR. BURR: Is there any possibility that any of that information is not accurate and true?

MR. SWICK: Within the limits that we trust each other there is no possibility, no.

MR. BURR: And by we trust each other, you are speaking of the people from whom you obtained this information?

MR. SWICK: That is correct.

MR. BURR: Did you present these people as witnesses in your behalf in presenting these complaints to the Seward School Board?

MR. SWICK: Did we present these people?

MR. BURR: Yes.

MR. SWICK: To the Howard School Board?

MR. BURR: Or their statements. Yes. Witness Jesse Moore for instance.

MR. SWICK: Jesse Moore presented himself before the Seward School Board in a meeting I believe in January — quite extensive minutes on it, I believe. There was no American Federation of Teachers to support Jesse Moore at that time.

MR. BARR: Was Jesse Moore a member of the AFT?

MR. SWICK: He is not.

MR. BURR: Is the AFT looking out for the interest of anyone besides the members?

MR. SWICK: Only in a general way as to the well being of education in general.

MR. BURR: Jesse Moore as the custodian is contributing something to the education of the children of Seward?

MR. SWICK: He was at the time he was working here, yes, sir. If he wasn't, he shouldn't have been paid by the Seward School Board.

MR. BURR: So, as far as you know, all the information on Exhibit 7 was true, in every respect?

MR. SWICK: Yes, sir.

MR. BURR: I noticed in paragraph 1 of Exhibit 7, you make reference to the illegal non-retention of three teachers. Now these three teachers did in fact receive notices of non-retention from the School Board, did they not?

MR. SWICK: That is correct, sir.

[291] MR. BURR: And as a matter of fact, all three of these teachers were advised by the Seward School Board that the Board would present them with a Bill of Particulars as the law contemplated if they desired. Are you familiar with that?

MR. SWICK: I'm afraid you're mistaken sir, the letters that they received said that they could have a conference with the Superintendent — that is not a bill of particulars.

MR. BURR: They were not advised that they could get a bill of particulars, if they wanted?

MR. SWICK: Not in that letter.

MR. BURR: Do you know whether or not they were subsequently advised?

MR. SWICK: I have no way of knowing that.

MR. BURR: Did you ever ask them?

MR. SWICK: Certainly I asked them.

MR. BURR: Isn't it true that all three of these individuals waited until after the deadline for the new contracts, to bring to the attention of the school authorities that they believed that there had been some irregularity in notice of non-retention?

MR. SWICK: That's true, sir.

MR. BURR: Was this done at your request?

MR. SWICK: No, sir.

MR. BURR: Was it done at the request of the AFT local?

MR. SWICK: There was no AFT local at that time.

MR. BURR: How about the Seward District Teacher's Association?

MR. SWICK: I can't testify to that, sir.

MR. BURR: Who was it that first brought to the Board's attention the apparent irregularity in the notice of non-retention?

MR. SWICK: It was a committee of the Seward District Teacher's Association, the Grievance Committee?

MR. BURR: When was that Grievance Committee looking into this with reference to the deadline of the contracts?

MR. SWICK: It was formed and took action all on one day, on or about the day of that communication to the Board.

MR. BURR: Was that before or after the deadline for the contracts?

MR. SWICK: I believe it was after, sir.

[292] MR. BURR: All three of the teachers were subsequently and thereafter offered contracts, were they not?

MR. SWICK: There was a motion made on May 8th, I understand, to return those contracts. One of the teachers apparently must have got her contract because she taught this past year. I can't testify as to the other two, I've never seen their contracts — I know that there was some feet dragging the following week as there was the problem about actually getting the signed contracts to the teachers after the motion of the Board.

MR. BURR: You have heard testimony earlier in this hearing that three of the teachers were tendered the opportunity of contracts, haven't you? The opportunity of receiving contracts from the Board?

MR. SWICK: I don't know what that means. Tendered the opportunity.

MR. BURR: I believe that Mr. Fabricius stated that the Board subsequently did offer contracts to these teachers, the ones that didn't have positions already at that time. I believe one of the teachers had already secured another position.

MR. SWICK: Yes, I guess he said that.

MR. BURR: Well, do you have anything to the contary to rebut it?

MR. SWICK: What? That they did not get their contract?

MR. BURR: Yes. Or that they were tendered the contracts? Offered the contracts?

MR. SWICK: Actually delivered a written signed contract?

MR. BURR: Or offered a contract?

MR. SWICK: What type of offer, sir? Written, verbal or timely?

MR. BURR: Is there any requirement that it be in writing?

MR. SWICK: The requirement is that the contract be offered, not an offer of a contract.

MR. BURR: Well, are you telling me at this late date that these people, that there was another irregularity in the tendering of those contracts?

MR. SWICK: We discussed that with Mr. Howell on May 16th.

MR. BURR: Well, aren't you satisfied that the Board did all within their power and within reason to correct what they admitted to have been an irregularity?

MR. SWICK: Not quite, sir.

MR. BURR: What did they not do that they could have done?

MR. SWICK: In the matter of Deb Armstrong, the Board did not issue her a contract so she could then have resigned and kept her copy to show [293] that she left with a clean slate. The Board did, presumably again, the Board did, a note came over Mr. Fabricius' signature showing that at the February 16th meeting, Mrs. Armstrong had been re-elected. That's a very curious thing, she had already been refused to be hired on that same meeting night. So we have the two letters and they're totally contradictory. Hardly consistent with your contention that she was offered a contract.

MR. BURR: So you believe that they were not offered contracts?

MR. SWICK: I have reason to believe Mrs. Armstrong never got a contract.

MR. BURR: Is she teaching now?

MR. SWICK: As far as I know, she is, sir.

MR. BURR: Do you believe that regulations should be followed as they apply to the teachers of the School System?

MR. SWICK: Yes, sir.

MR. BURR: Were you familiar with the regulations that were in effect in the Spring of 1959?

MR. SWICK: Yes, sir.

MR. BURR: Which I have called and which Mr. Walton has called, the assumed regulations of the Seward School System. Were you familiar with those regulations in the Spring of '59?

MR. SWICK: We all had that book, yes, sir.

MR. BURR: It was distributed, wasn't it, Mr. Swick, to all the teachers?

MR. SWICK: I guess so.

MR. BURR: Did you read it in the spring of 1959?

MR. SWICK: Oh, yes.

MR. BURR: Do you believe that it applied to you?

MR. SWICK: Yes, sir.

MR. BURR: Do you believe that it was binding on you?

MR. WALTON: Objection — calls for legal conclusion — assumes whether or not they were ever adopted by the Board which hasn't yet been proved.

MR. BURR: Assuming that they were adopted — do you believe that these regulations were binding on you, Mr. Swick?

MR. SWICK: To the point of dismissal, you mean, sir?

MR. BURR: To the point that they applied to you as you read them — understood them?

[294] MR. SWICK: Yes.

MR. BURR: So, if it were established, Mr. Swick, that there was a deviation from any departure of facts, the latter of those regulations in the Spring of 1959 by Mr. Swick or Mr. Watts, by Mr. Watts and Mr. Blue, would it not be fair to state that the viola-

tion of those regulations was conduct which would be other than acceptable conduct of a teacher in the Seward System, if it was done willfully?

MR. SWICK: If it were done willfully and if it were clearly established, yes I believe I would say so.

MR. BURR: You were offered a contract in the Spring of 1959, Mr. Swick?

MR. SWICK: Yes, sir.

MR. BURR: And the contract signing time was postponed for a period of time thereafter because there was a teacher's pay bill under consideration?

MR. SWICK: I believe that's right, sir.

MR. BURR: And you received a letter from the Seward School Board, or perhaps from Mr. Fabricius, extending the time as I recall to the month of May, 1959, for the returning of the same contract — April, perhaps?

MR. SWICK: Yes, it was a mimeographed memo rather than a letter.

MR. BURR: And this document had a notation on it to the effect that it must be returned by a certain date to the school authorities in order to be validated. Is that correct?

MR. SWICK: That's correct.

MR. BURR: Did you return your contract?

MR. SWICK: Yes.

MR. BURR: When?

MR. SWICK: Sept. 8th.

MR. BURR: When did the contract require to be returned on this notation?

MR. SWICK: This notation? I think April 20th. The notation said April 10th.

MR. BURR: Did you return yours by April 10th?

MR. SWICK: No.

MR. BURR: Did you have any reason for not so doing?

MR. SWICK: Yes, sir. There was a lot of tension, I was very busy at that time, it slipped my mind.

[295] MR. BURR: Wouldn't it be more accurate to state, Mr. Swick, that as a member of the newly

formed AFT, you were testing — you were testing and tantalizing the School Board as to whether or not they were governing you or you were governing the School Board?

MR. SWICK: No, sir.

MR. BURR: That was not your intention?

MR. SWICK: No, sir.

MR. BURR: What was more important than submitting back your contract of employment for the year 1960?

MR. SWICK: You mean by a certain date, sir?

MR. BURR: I mean in accordance with the instructions from the Superintendent of Public Schools? Or don't you take orders from the Superintendent?

MR. SWICK: I wasn't sure they were his instructions.

MR. BURR: Whose did you think they were, Mr. Swick?

So you don't have any real reason for not having turned that contract in in accordance with the notation, at all, under September 1960?

MR. SWICK: I gave you my reasons.

MR. BURR: Did Mr. Watts turn his contract in?

MR. SWICK: I presume he did.

MR. BURR: Did Mr. Blue turn his contract in?

MR. SWICK: I believe he did.

MR. BURR: Did they wait until September 1960 to turn them in?

MR. SWICK: I don't know what their validation date is, sir.

MR. BURR: You know when they turned it in?

MR. SWICK: No, I don't.

MR. BURR: As a matter of fact, you were the only teacher in the whole Seward School System that waited until September to turn your contract in?

MR. SWICK: I can't testify to that, sir.

MR. BURR: If I were to say that's true, have you anything to rebut it?

MR. SWICK: No, sir.

MR. BURR: Did you think you had a job in September 1960 not having heretofore turned your contract in to the authorities?

[296] Let me rephrase it. In September 1960 when you presented yourself as you have testified earlier at the Grade School as I remember, did you think, were you of the opinion that you had a job for the year 1959-60 or 60 and 61, I'm sorry.

MR. SWICK: Yes, sir. I was prepared to go to work, yes, sir.

MR. BURR: Well did you seriously and conscientiously think that you had a job in view of the fact that you had not previously submitted your contract as required?

MR. SWICK: Well, there had been a couple of years before when my contract hadn't been submitted until oh on in the fall, October or November, this was well in advance of that date.

MR. BURR: Did those contracts also have a notation of validation date of April on them?

MR. SWICK: Not that I recall sir.

MR. BURR: You did see that notation of validation date on your contract, didn't you?

MR. SWICK: Only very casually.

MR. BURR: Did you make any effort to communicate with any member of the Seward School Board of the Superintendent in the summer of 1960 relative to your intentions to return to school in September 1960?

MR. SWICK: No, sir.

MR. BURR: Did you have an opportunity to?

MR. SWICK: Yes, sir.

MR. BURR: You did see them from time to time? But you made no mention of your intentions?

MR. SWICK: Of what?

MR. BURR: To come back to school?

MR. SWICK: To enjoy the benefits of my continuing contract?

MR. BURR: To come back to school in the Fall of 1960?

MR. SWICK: No, sir. The Continuing Contract Law supposes that.

MR. BURR: Have you read this law, Mr. Swick?

MR. SWICK: Yes, sir.

MR. BURR: And your lawyer has advised you that you had a contract without signing one?

[297] MR. SWICK: I believe that can be read into the law, yes.

MR. BURR: Did your lawyer tell you that?

MR. SWICK: I can't recall specifically whether he did or not.

MR. BURR: It is your opinion and you have the opinion that law so provides that you have a contract from year to year without the requirement of signed contract? Is that true?

MR. SWICK: Would you state that again, sir?

MR. BURR: You are of the opinion now and you have been for some period of time, that you have a contract of employment with the Seward School Board without regard to a written contract?

MR. SWICK: No, sir.

MR. BURR: Then you do believe it's necessary to sign a contract each year as the School Board has required?

MR. SWICK: Well, I always have.

MR. BURR: Do you believe that's necessary as a condition of employment?

MR. SWICK: That's a legal point, sir, I can't be examined on that.

MR. BURR: Let's not be modest Mr. Swick, you've given many legal opinions here already.

MR. WALTON: Mr. Casey, I'm going to have to — let me ask this — I don't like to object but this isn't really relative to the issue to have Mr. Burr to take this man's deposition that he's brought a law suit against the School Board — he knows all the answers — it isn't relative to this controversy. I really can't see.

MR. BURR: Well this has been gone into rather thoroughly on direct examination, Mr. Walton, and I'm doing nothing but cross examining him on your testimony. Even in a Court of Law that would be permissible.

MR. WALTON: You're beyond the scope of my direct.

MR. BURR: Well, thank you Judge, let's proceed.

MR. WALTON: I don't mind your antagonism and jocularity, but Mr. Casey, I don't believe that this goes to the witnesses and I do wish to

MR. CASEY: Are you objecting to this, Mr. Walton?

MR. WALTON: I was objecting there, secondarily to the sarcastic nature of the question — I think it's an attempt to incite the anger of the witness — it's a purely argumentative question, but my basic objection here is that this isn't relative to the controversy. I did not go into such detail questioning as to whether or not [298] this man thought he had fulfilled all the legal requirements to secure his rights under the Tenure Law. I can't see that it's relevant to the question of whether or not the Appellants were guilty of immoral conduct or violated any regulations.

MR. CASEY: You did make an objection, Mr. Walton?

MR. WALTON: Yes, sir. I object to this line of questioning as irrelevant — that's the nature of my objection.

MR. CASEY: Objection overruled, proceed.

MR. BURR: Mr. Swick, am I antagonizing you with this type of interregation?

MR. SWICK: No, sir.

MR. BURR: Have I irritated you?

MR. SWICK: No.

MR. BURR: Have I made you mad?

MR. SWICK: No.

MR. BURR: I don't mean to, if I have — accept my apologies.

You testified on direct examination that you circulated a petition for the formation of the American Federation Teachers, Seward Local?

MR. SWICK: Yes, sir.

MR. BURR: Did you personally carry this petition around?

MR. SWICK: I did, sir.

MR. BURR: Did you carry it during the school hours?

MR. SWICK: No, sir.

MR. BURR: After school hours?

MR. SWICK: I think it was the weekend, sir.

MR. BURR: You sure of this?

MR. SWICK: Yes, sir.

MR. BURR: You also testified on direct examination that you told — that you told Mr. Fabricius that he would have a chance to tell the Seward public the reasons for his actions?

MR. SWICK: That's right, sir.

MR. BURR: Now, was that — what was the date of that meeting that you were making reference to there?

MR. SWICK: The meeting coming up on May 8th.

MR. BURR: Was that a public meeting?

[299] MR. SWICK: Yes, sir, it was so advertised and there was considerable anticipation of it in the community.

MR. BURR: Who advertised this meeting?

MR. SWICK: The Seward School Board.

MR. BURR: It was not a regular meeting, was it?

MR. SWICK: I think the way it was described by Mr. Howell was that it was a regular meeting held at an irregular time in order to accommodate the Commencement program which would fall on the regular meeting night. I think that's the way it was told to me.

MR. BARR: You've known Mr. Fabricius since the fall of 1958 haven't you Mr. Swick?

MR. SWICK: Yes, sir.

MR. BURR: And during and after, well during the school year 1958-59 and up until the present time have you had an opportunity in your negotiations and your dealings with Mr. Swick, sufficiently as to form an opinion as to whether or not he has a good, bad or indifferent reputation for truth telling?

MR. SWICK: With Mr. Fabricius?

MR. BURR: Mr. Fabricius, yes.

MR. SWICK: My contacts with him have been extremely limited.

MR. BURR: Would you say you're not in a posi-

tion to give an opinion of his veracity, or his reputation for veracity?

MR. SWICK: Not unless you specify a particular statement and then I find that it is within my realm of knowledge, then I would testify.

MR. BURR: Based upon your contacts with Mr. Fabricius, professionally and otherwise, do you believe that Mr. Fabricius would give false testimony under oath?

MR. SWICK: I don't know him well enough sir, to testify on that.

MR. BURR: You have no opinion of this?

MR. SWICK: No, sir.

MR. BURR: I have no other questions.

MR. WALTON: May I redirect, sir?

MR. CASEY: Yes, go ahead.

MR. WALTON: Mr. Swick, I'm handing you now the Board's Exhibit 20. I believe Mr. Burr asked you if you had ever seen it before tonight and I believe your answer was no, was it not?

[300] MR. SWICK: That's true, sir.

MR. WALTON: Have you ever heard about this thing — whatever it is, we don't really know what it is — it hasn't been identified, but it appears to be a clipping out of a paper. Have you ever seen anything like this before, anywhere?

MR. SWICK: No, sir, I haven't.

MR. WALTON: Has anyone ever told you about this or anything similar to it.

MR. SWICK: No, sir. Not to even identify it — no paper, or date, or anything.

MR. WALTON: Do you know what Sentate Bill 141 is?

MR. SWICK: I believe that's what's commonly referred to as Teacher Tenure Bill, isn't it?

MR. WALTON: Of what year?

MR. SWICK: It must be the 1960 Act — I'm not sure. I judge from the item that the Act under which we are operating here tonight.

MR. WALTON: Are you prepared to say, categorically and incidentally, this is very difficult, Mr.

Chairman, to examine this witness on something that has not yet been identified. Perhaps the Board will be so kind as to identify it for us so we can talk about it?

MR. BURR: I plan to offer it at a later time, Mr. Walton, if the witness can identify it.

MR. WALTON: I see. Well, this says — may I ask this question? It says "Seward High School Friday, 7:30 PM." so I presume that it was intended to refer to this meeting. Is that what your witness will testify to among other things?

MR. BURR: Why don't we wait and find out? Unless you care to identify it for the record?

MR. WALTON: I can't — I've never seen it before.

MR. BURR: It appears to be signed by an organization that you are familiar with.

MR. WALTON: It appears to be signed not by an organization, Mr. Burr, but by quote Friend of The American Federation of Teachers" and I can advise the Board right now that I've inquired of my clients and they've never seen it before and they don't know what it is. Therefore, I'd appreciate it if you can tell me if it was published on or about this date. If you prefer not to, Mr. Burr, that of course, is your perrogative.

Apparently this thing may have been published in the paper. Now, Mr. Swick, are you prepared to tell this Board you don't know anything about the publication in any paper of Exhibit 20?

MR. SWICK: That is correct.

[301] MR. WALTON: Are you categorically prepared to state that you don't know how it was published, if it was published?

MR. SWICK: You mean who put it in?

MR. WALTON: Yes.

MR. SWICK: No, sir, I am prepared to state that I do not know who put it in.

MR. WALTON: Did you ever know that anything like this was ever going to be published?

MR. SWICK: No, sir.

MR. WALTON: Would you have ever permitted it to have been published with your knowledge, and your consent and your funds to pay for such a thing?

MR. SWICK: No, sir.

MR. WALTON: Mr. Swick, do you think that it's a good thing to have something like this published in advance of a meeting, such as this? I invite you to look at it. I mean to say would you place something like that in the newspaper for publication, in advance of this meeting?

MR. SWICK: No, sir, as I believe it tends to sensationalize a very serious hearing.

MR. WALTON: As a matter of fact, Mr. Swick, it does appear to have been published, does it not, by someone who would in fact tend to mock the hearing?

MR. SWICK: That's a possibility.

MR. WALTON: I invite you to examine it and I ask you in fact if that possibility does not occur to you?

MR. SWICK: Perhaps.

MR. WALTON: It is very likely, Mr. Swick, that this Exhibit 20, if it was published, was published not by a Friend of the American Federation of Teachers, but by someone, some person intent on destroying the effectiveness of this hearing?

MR. BURR: I want to register my objection for the record. There have been cross-examinations for 10 minutes at least on a document this man said at the very beginning that he couldn't identify. I don't know how immaterial, irrelevant and how far afield you can get, but this is just about the worse that you had yet.

MR. WALTON: Mr. Burr, this would never have arisen had you introduced it in the proper way. You even haven't identified it.

MR. BURR: The man said he couldn't identify it. I plan to introduce at a later time.

[302] MR. WALTON: Will you permit them to call this witness back and examine him at that time?

MR. BURR: You can call him whenever you want to if it's identified by him?

MR. WALTON: Mr. Casey, I believe, Mr. Burr

has made an objection. He objects to my question about this document.

MR. BURR: I object to continued examination of a document the man categorically denies any knowledge of. I submit it's improper direct examination, re-direct examination.

MR. WALTER: I'm certainly entitled to ask whether or not he might have had anything to do with it or know anything about it.

MR. BURR: You have asked that question.

MR. WALTON; And I'm entitled to pursue that line of questioning.

MR. BURR: Do you want to ask it again?

MR. WALTON; I'm asking — I'm pursing that line of questioning.

MR. BURR: Pursue or deny — go ahead then.

MR. WALTON: I take it you withdraw the objection?

MR. BURR: Yes, I'll withdraw it, Mr. Walton.

MR. WALTON: Thank you. Now, Mr. Swick, I think Mr. Burr has asked you if you're not beating dead horse, to use his language, in pursing your interest in this matter? As a matter of fact, Mr. Swick, if your right to reenstatement, and if the appellants rights to reenstatement as teachers are not vindicated, their teaching carrers and yours, will be very much in jeopardy, would they not?

MR. SWICK: I would say that they would be ended.

MR. WALTON: Why?

MR. SWICK: For the reasons that Mr. Fabricius has testified. That blacklisting not only has taken place, but it has been highly effective.

MR. WALTON: Mr. Swick, do you know whether or not the fact that you and possibly these appellants are non-retained, do you know whether or not that fact would impair your opportunity to secure employment as teachers in Alaska?

MR. SWICK: Mr. Fabricius own testimony names such as these go on blotters, they may even be submitted to organizations which would encourage legal action revocation of certificates, I don't know.

MR. WALTON: Has Mr. Fabricius ever indicated or anyone connected with this Board that yours or anyone else's teaching certificate might attempt to be revoked?

MR. SWICK: He's never told me that. I can't testify to that at this time.

[303] MR. WALTON: Did Mr. English at Seldovia, or anyone else at Seldovia, indicate toyou why the Superintendent's position might not be open to you? Other than the reasons you've given?

MR. SWICK: No, sir. In fact, we had a very satisfactory talk earlier in the summer, before the letter from Seward arrived.

MR. WALTON: Mr. Burr asked you a question about what the overall objective of AFT is. I believe you answered in terms of what the immediate objective of AFT was. Namely to get better relations between the teacher and the Board.

MR. SWICK: Yes, sir.

MR. WALTON: Would you now please answer his other question. What was the overall the long term objective of AFT?

MR. SWICK: Essentially the same as the NEA and the School Board's Association, and I Presume the local School Board, and many other conscientious persons interested in education, that is, to improve working conditions, which includes of course, increases of salary levels and they're so standard, they hardly bear repetition.

MR. WALTON: What are the significant differences, if any, say between the AFT and the SDFA?

MR. SWICK: In their goals I would say they are practically identical, so the method of operation is again identical, they are limited to the same rule books that other professional organizations are in dealing with our employing groups. However, we do not hesitate to call a spade a spade when the situation becomes necessary.

MR. WALTON: As a matter of fact the local units of AFT are exclusively restricted to teachers and not to administrators, are they not?

MR. SWICK: That's right, sir.

MR. WALTON: That is not true of the local units of the NEA, is it?

MR. SWICK: No, sir. The NEA does have a Class Room Teachers Association, which I understand Mr. Fabricius frowns on in this school.

MR. WALTON: No other questions.

MR. CASEY: He has no other questions. Do you have any other questions, Mr. Burr?

It is apparent that we are not going to finish this hearing tonight, it is practically 7 o'clock so we will adjourn this hearing until 1 PM tomorrow.

Hearing reconvened November 12, 1960 at 1:00 PM. Roll Call, Casey, present; Burr, present; Mrs. Skinner present and Mr. McRae present.

[304] CHAIRMAN CASEY: The meeting — the case of Mr. Blue and Mr. Watts adjourned last night, is reconvened. It's November 12th and the hour is 1:05 PM. Would you proceed, Mr. Walton?

MR. WALTON: Yes, sir. May we call Mr. Blue? Will you raise your right hand? Do you swear that the testimony you are about to give is the truth, nothing but the truth, so help you God?

MR. BLUE: I do.

MR. WALTON: Please be seated. Your full name, sir?

MR. BLUE: Walter B. Blue.

MR. WALTON: How old are you, sir?

MR. BLUE: Fifty.

MR. WALTON: What is your occupation?

MR. BLUE: Teacher.

MR. WALTON: Where do you live?

MR. BLUE: Seward.

MR. WALTON: Are you a family man?

MR. BLUE: Yes, sir. I have a wife and one child.

MR. WALTON: What is your occupation?

MR. BLUE: School teacher, presently in the state of doubtful employment.

MR. WALTON: How long have you been a school teacher?

MR. BLUE: Fifteen years.

MR. WALTON: How long have you lived in Seward?

MR. BLUE: Seward has always been my residence all my life.

MR. WALTON: How long have you taught in Seward?

MR. BLUE: Fifteen years.

MR. WALTON: I believe you have stated your educational background, sir?

MR. BLUE: I believe I have, sir.

MR. WALTON: You have 1 or 2 degrees?

MR. BLUE: One degree.

MR. WALTON: You received it from?

MR. BLUE: Washington State University.

[305] MR. WALTON: And the year?

MR. BLUE: The year was 1932 of graduation, I didn't apply for the degree until a few years later. I don't remember the year.

MR. WALTON: And the subject was what?

MR. BLUE: My major was English.

MR. WALTON: Mr. Blue, you are one of the appellants, are you not?

MR. BLUE: Yes, sir.

MR. WALTON: And you have been charged by this School Board with, among other things, of assisting with the distribution and printing of an Open Letter, being Board's Exhibit 7.

MR. BLUE: Yes, sir.

MR. WALTON: You have a copy of the Board's Exhibit 7, do you?

MR. BLUE: Yes, sir, I do have.

MR. WALTON: And you have also been charged, have you not, with circulating distorted and misleading statements contained in that Open Letter?

MR. BLUE: Yes, sir.

MR. WALTON: Please direct your attention to page 2 of the Open Letter and particularly the second paragraph following paragraph 10, wherein some reference is made to efforts on behalf of a group of teachers to correct certain acts. Do you see the paragraph, sir?

MR. BLUE: Yes, sir, I do.

MR. WALTON: You have heard Mr. Swick's testimony in regards to that paragraph, have you not?

MR. BLUE: Yes, sir, I have.

MR. WALTON: Is there anything in particular — if I were to have asked you the same question that I asked Mr. Swick with regard to what efforts were taken and which are therein referred to, would your answer have been substantially the same?

MR. BLUE: Yes, sir, it would have.

MR. WALTON: Is there any particular on which you feel you can furnish the Board with additional information that Mr. Swick was unable to furnish? I direct your attention to the subject of the May 8th meeting.

MR. BLUE: The May 8th meeting was not fully covered because Mr. Swick, of course was not in attendance, and I was. And at this meeting, Attorney Pat Ervine was our counsel.

MR. WALTON: By our, you are referring to whom?

[306] MR. BLUE: The American Federation of Teachers. And his instructions were three, One, to do what he could to secure the non-retention contracts, and two, to assist in the matter of the educational extension requirements. These two objects were accomplished. Now, at the time, Mr. Ervine had in his possession, not these documents, but a document or notes from which this was compiled, that covered all the items in here with the exception of two which had not yet occurred.

MR. WALTON: Which were what?

MR. BLUE: The matter of Mr. Swick's being — his position being declared inexplicably vacant, and the matter of Mr. Smith's alleged demotion. The third one was another instruction. There had been a great deal of discussion within the union group on the matters contained in this letter and others, but they're perhaps not pertinent. We had attempted throughout our existence to get a communication with the Board. This in fact, is the key to the whole thing.

Securing some sort of communication of getting our grievances to them, having them discussed, finding out whether or not our grievances were valid, getting adjustments if adjustments were properly forthcoming. Mr. Ervine had this information with him, but had deliberately withheld this information from the public. During this period of time right towards the end of school, as a matter of fact, any time in the school year, we didn't feel that we wanted to make these things public, but rather that if communications could be established, most of them could be solved rather readily.

MR. WALTON: What were your instructions to Mr. Ervine with respect to this particular information and these particular grievances?

MR. BLUE: Our instructions to Mr. Ervine were to try to get these materials to the School Board for consideration so that the problem could be resolved.

MR. WALTON: Now, after the May 8th meeting, were there any such attempts made by the AFT through its attorney, Mr. Ervine?

MR. BLUE: Yes, there was.

MR. WALTON: Well, explain it.

MR. BLUE: Mr. Ervine spoke to the Board requesting them, stating substantially what I have said, you understand that during this meeting, several people in the audience had made mention of what they called a Bill of Particulars, and even Mr. Fabricius made reference to this Bill of Particulars, and he even asked that it be brought out, but we didn't think it a proper thing to expose it to the public until every avenue had been exhausted for communication. So we asked him to try to get to the Board from some seven steps or so, and so he did, he approahced the Board and said this problem can be easily resolved, gentlemen, if we come together and meet in private briefly. And the Board, this Board here with the exception I believe of Burke and Mrs. Skinner, the other members, did not respond to this question. I think the question was asked more than once. I don't remember how many times.

[307] MR. WALTON: When Mr. Ervine asked this question, did he make it clear what he was referring to? When he asked if the Board would meet with him in a private conference?

MR. BLUE: Well, this was his instructions, and he had the information, I was sitting in the front row, he approached the Board and talked to them I think quietly.

MR. WALTON: He requested to meet with the Board in private and discuss the matters set forth in the Open Letter?

MR. BLUE: Exactly.

MR. WALTON: And his request was ignored?

MR. BLUE: His request was ignored.

MR. WALTON: Now, with respect to the matters set forth in the Open Letter itself which are alleged by the Board to being false, distorted and misleading, I would like to ask you some specific questions, but I wish to avoid repetition of earlier testimony when possible. Is there anything with respect to Paragraph No. 1 which you can add to what has previously been testified to? If not,

MR. BLUE: No, sir, there is not.

MR. WALTON: By that answer you imply that there is nothing to your knowledge, there is nothing in paragraph 1 that is false, distorted or misleading?

MR. BLUE: I don't believe there is, sir.

MR. WALTON: With respect to Paragraph #2 of the Open Letter regarding tension and friction, is there anything which you can add to the testimony previously elicited?

MR. BLUE: I believe I can, sir.

MR. WALTON: Please do.

MR. BLUE: Matters of tension, friction, have already been attested to, I believe by Mr. Fabricius. I believe most of us recognize that this thing existed. On the other hand, it's a difficult thing to describe precisely what tension and friction is, it's a sort of subjective judgment to the place to that I believe created this feeling on the part of the faculty judgment. This is rather a long story. In the beginning

of the year, prior to Mr. Fabricius' coming here, there was some small talk going around about dissatisfaction with the previous administration and that a man had been hired who was very firm in his discipline. When I heard this story, I thought well, it's all to the good. I personally did not regard the previous administration as being lax, but we were all in favor of good discipline, so this was a positive thing. So then I attempted to, inspite of the little things I heard, ignore them, because you can't prejudge a man. And then when school started, he made an announcement of his policies, most of them were I think, acceptable. But, almost immediately, a very good, a seemingly very good teacher, very popular teacher, very capable one, was discharged — I am referring to Jack Condor. [308] Since he stated that he was a firm man — it seemed that the discharge of Mr. Condor was something that could have been handled administratively without sacrificing a good man to the system. Now, I think, that immediately, whether or not they knew all of the details surrounding this, that it created a feeling among the teachers of "who's next". So this perhaps was the beginning of the feeling friction and tension among teachers and I assume that the youngsters who had known the work of Mr. Condor, also had a feeling of resentment. It's probably the first point in which friction and tension were noted. So as things went along for a while, and there was a meeting in January, 1960 I believe it was

MR. WALTON: It would be in January, 1959, would it not?

MR. BLUE: If there was — there was one in both of those — let me clarify my point. Oh that was the meeting in which Mr. Fabricius made reference in this room to a rumor which was reported that teachers were out to get him — to buy up his — no it wasn't this room, it was the room down the hall — in which he made reference to a rumor that teachers were out to buy up his contract. And I was quite surprised at this as I had not heard this rumor at any time and wondered what it meant. It seemed like a

very strange thing to me. My impression was that maybe it was contrived, I didn't know, the thought crossed my mind that it was something that he's thought out himself, because if a man is doing a competent job, I'm sure that Mr. Fabricius felt that he was, there would be no reason for anyone to get him. And if he were not, it was possible for the Board if it saw fit to discharge him and buying up the contract. So it seemed to me, to be rather a ridiculous type of rumor. I think that Mr. Fabricius attributed this to having originated with the teachers, but as I say I had never heard of it, nor had I heard it discussed, so here again, I wondered just why this kind of thinking prevailed. Seemed rather strange to me, not strictly rational, but you understand, not necessarily otherwise. At this meeting we heard that there had been a similar meeting over at the Grade School which was considerably more explosive in its character, but of course, I didn't attend that meeting and this I believe was the main item of the meeting. And I think when you are accused, or when a group is accused of circulating a false rumor, it tends to generate a certain degree of tension and a certain degree of friction.

MR. WALTON: Did it in fact, in this case?

MR. BLUE: I feel certain that many of us began to be wary of this thing, being accused falsely of things that were not so, yes.

MR. WALTON: Again, I do not wish to belabor this point, I don't want to induce repetitious testimony, but is there any other example in particular that you wish to produce in support of the allegations in paragraph 2 of Board's Exhibit 7?

MR. BLUE: Paragraph 2 — tension and friction. Yes, sir, I believe there were other elements in this entire complex. Over the year 1959 — 1958-59, the first year of Mr. Fabricius' tenure here, a number of occurrences [309] came about, bulletins, and introduction of new rules and so forth, which I think, gradually built up this kind of tension which is referred to here. First of all, there had been the item to which

I referred, the discharge of Mr. Condor, which we could not understand. Then following that, right at the beginning of the year, I think it's in the second or third week of September, we have Student Body Elections. It's part of the process of attempting to teach democracy on the sort of classrooms level, of holding caucases and so froth. The Student Body Election was held, the student body has its constitution and bylaws by which it goes, and from year to year, they run into problems and then they have the opportunity to change or revise this by practice and by experience. This particular election in the Fall of 1959, the Student Body election was in the process of being carried out and they had come to the point of counting votes. And it was announced that 1 of the two candidates for president of the Student Body had the election by a majority of 1. So the students hastily paid their student body dues which made them eligible to vote, cast their votes and then the election went to the other students. When this was reported to Mr. Fabricius, he said to me, "this stinks" and then he ordered a re-election, which it happens, came out the other way. In other words, he was administratively contravening the elective process of the students, such as it was. Now this is a matter of purely opinion, I thought this was an opportunity for these people further to practice this thing that had been going on and had been developing for some years.

MR. WALTON; What thing?

MR. BLUE: This business of conducting an election and learning from their mistakes. As I say, he arbitrarily ordered this re-election — I suppose it was within his authority, but I thought it was an opportunity for these youngsters to learn more about the process about democracy. Now this is purely a personal impression, you understand.

MR. WALTON: Did this result in any tension among the pupils or friction among the teachers?

MR. BURR: Objection, it's all his opinion.

MR. WALTON: Mr. Burr, I won't argue — I would

like a ruling. Excuse me, to expedite matters, I will withdraw the question. What effect, if any, upon the students did this decision have?

MR. BURR: Same objection, but go ahead and answer it.

MR. BLUE: I did not poll the students on this, nor did I talk with them about it, so I don't know what the effect on the students was.

MR. WALTON: Very well.

MR. BLUE: I know what the effect was on myself. I had been supervising these things for a number of years — that's some modest accomplishment, I suppose. I felt that he had taken the matter out of my hands. That was all right, I made no objection to it. I didn't feel especially happy over it.

[310] MR. WALTON: Now, Mr. Blue.

MR. BLUE: Yes, sir.

MR. WALTON: Is there any other detail or particular which has not been testified to, but which you feel the Board should know about to support that same paragraph?

MR. BLUE: Yes, sir. There were regulations introduced during, I believe, it was 1959, which on the face of them were pretty much acceptable. One of them was the rule against smoking in the building, which is a rather standard thing, and I don't think we can make any particular brief for smoking as a desirable habit. Now this rule, in its effect, made it not possible for teachers to smoke in the building at any time during their duty day, with the exception of a period of 15 or 20 minutes during the noon hour when they might be in school. Mr. Fabricius own comment on this rule to the Board was, there may be some grumbling about this.

MR. WALTON: Now do you know this was his comment?

MR. BLUE: I believe from having seen the School Board minutes, sir. Now, I didn't hear any grumbling about it. I heard some comment about it and I had a reaction to it myself. As I say, I make no brief for smoking, this is something that had been permitted

previously and now this rather restrictive rule was passed. The thing about it that probably created a feeling of friction was, that here was an arbitrary rule that in its effect seemed to regard teachers as so irresponsible that they had to be reminded about the discretion of such matters.

MR. WALTON: Specifically, what was the regulation and rule?

MR. BLUE: There shall be no smoking in building except for the custodians who are permitted to smoke in the boiler room, teachers could not smoke in the school building during the duty day with the exception of about 15 minutes or so during their noon hour when they were immune to it.

MR. WALTON: Duty day is when?

MR. BLUE: From 8:30 in the morning until 4:20 in the afternoon.

MR. WALTON: Anything else with respect to paragraph 2.

MR. BLUE: Yes, relative to the duty day. The duty day was extended from what it had been to 4:20 in the afternoon. And also there was a period of time during which the noon hour was modified so that it gave the effect of a little more time in school, adding perhaps some 20-25 minutes to the duty day. Here again, on the face of it, superficial, there was no objection to this, as far as the time element was concconcerned because teachers customarily stay after school, often at their instance to instruct or help youngsters, or at parent conferences, this issue was revised, I believe. Or even sometimes to do work and also they sometimes had other additional duties upon them beyond the duty day, maybe in the evening, and there was no objection to this, this was part of the pattern of teaching. This is understood [311] before you start. But there are times, many times in fact during the school year when at 4 o'clock there is no particular need to remain. So the net result of it was that teachers had to wait for what they thought or felt was an additional 15 minutes. So they did, and I don't think anyone complained about it, they felt that

here again teachers had to be regulated on matters of that sort. They had not personal discretion in the matter. The thing about these 2 rules which in itself was nothing, seemed not to recognize the discretion of the interest of teachers generally. It seemed arbitary — an arbitrary way of treating professional people who had invested time and effort and so forth in the school over a period of years.

MR. WALTON: I take it that your comments to the attention of the public in paragraph 2, the purpose of the AFT was not so much to complain about the rules and regulations, but rather to point out the friction and tension which you have referred to?

MR. BLUE: Precisely.

MR. WALTON: Now with respect to paragraph 3 of the Open Letter pertaining to Fire Drill regulations. Can you furnish the Board with any information which it does not already have?

MR. BLUE: I think not, sir.

MR. WALTON: The same question with respect to paragraph 4 concerning Jesse Moore?

MR. BLUE: I can't add to that, sir — it's all in the testimony.

MR. WALTON: With respect to paragraph 5 of the Open Letter, did you yourself ever hear Mr. Fabricius say the things there attributed to him or there when he said it?

MR. BLUE: The first part where he threatened to get 1/3 of the faculty, I never first-hand, no, sir, and I have formerly testified to that.

MR. WALTON: Now, with respect to the second or third sentence — with respect to the questions the teachers have allegedly raised — do you know whether or not, any teachers in fact did ask quote how could one man, a stranger coming in town have the right to tamper with the livelihood of teachers, taxpayers, property owners and upset a school system in a single year's time?

MR. BLUE: Yes, sir, I had heard comments to that general effect several times. I can point only to my own — that is I can specifically point out my

own — that is my own reaction. I have previously testified to that in the first hearing. Miss Barber also stated that to me and I believe there's a letter to that effect on Exhibit.

MR. WALTON: And who is Miss Barber?

MR. BLUE: Miss Barber was a biology teacher here during the year 1958-59.

[312] MR. WALTON: Do you know where Miss Barber is now?

MR. BLUE: I believe sir that she is at Unga, Alaska.

MR. WALTON: Do you happen to know why there's any particular reason why she's not teaching here?

MR. BLUE: Yes, sir. She left here of her own volition on a sort of missionary thing. She said to me that she didn't care to continue teaching here, but this was not the reason for her leaving.

MR. WALTON: Is there anything particular which you on your own behalf, or on behalf of the AFT can state in substantiation of the last sentence of paragraph 5 of the Open Letter? If not

MR. BLUE: Relative to the property and so forth, you mean?

MR. WALTON: Yes. Is there any information that you can furnish the Board at this time that they do not already have.

MR. BLUE: I don't think that that has been specified. I think there were some 18 property owners on the faculty at the time early in 1958-59. Now, I think there's something like 5 of them.

MR. WALTON: Five of them what?

MR. BLUE: Five property owners.

MR. WALTON: Doing what?

MR. BLUE: Well, teaching in the school system.

MR. WALTON: You mean of the teachers in the Seward Public Schools at the commencement of school year 1958, in your opinion there were 18 home owners here in Seward?

MR. BLUE: Yes, sir.

MR. WALTON: And about that number, there are only 5 today, still teaching?

MR. BLUE: To the best of my knowledge, sir. Of that original group, I don't know if any of the newer ones have bought homes or not.

MR. WALTON: Can you furnish the Board with any information that it does not already have with respect to paragraph 6 of the Open Letter?

MR. BLUE: As to the provoking of an outstanding teacher — there seems to be a violation — this has been commented on here, I don't think I can add anything to that.

MR. WALTON: With respect to paragraph 7 of the Open Letter referring to alleged dictatorial treatment of teachers, etc. Can you furnish the Board with any additional information that they do not have?

MR. BLUE: This alleged dictatorial treatment — I think I treated in part. I believe this ties up with the tension that has already been spoken of [313] and I think that already indicates a certain amount of dictorial treatment. There were elements throughout the school that seemed to be dictatorial, or perhaps somewhat ironical, or if not that, at least hardly proper on aprofessional level in the school. There was the matter for example of the public address system, which is not only a public address system, but a listening device.

MR. WALTON: What are you referring to?

MR. BLUE: It's the public address sytem which you installed in the school in 1959 — early in 1959, and it's for the ostensible purpose of making announcements throughout the school. The device also is one which makes it possible to monitor any part of the building at any time from the office. And it's supposed not to be audible during the time that it is monitoring. This was stated to me by the technician who installed the system. I don't know anything about it to my own knowledge. But I have had this experience — sometimes a slight hiss will come over the system — very faint, like a radio turned on very very low, and when this would happen, when no announcement would be forthcoming, youngsters in my classes would point up to this thing and make remarks

about it — like big brother is watching you and reference to George Alwell. They were aware that this was a sort of eavesdropping, that eavesdropping was possible, that monitoring was possible. I don't know of anything in the classroom that couldn't be heard, but when you feel that you're being eavesdropped upon, I think it withdraws the feeling of spontaneity in teaching and I don't know whether it was so used or not. This is a feeling that it engendered.

MR. WALTON: You're talking — you say that it did engender that feeling among, I think, of the other teachers in that school system?

MR. BLUE: It did to me, I've heard others comment to the same effect, yes, sir.

MR. WALTON: Other teachers have complained about it?

MR. BLUE: No one has made a formal complaint about it, no, sir.

MR. WALTON: I mean to say, have you heard other teachers complain about it?

MR. BLUE: Yes, I have.

MR. WALTON: Apparently other teachers the members of AFT made complaints without going through channels?

MR. BLUE: I don't know that they made complaints about it — this was one of these things. Why should you object to having your class overheard? Well, really, there's no objection — things could be taken out of context. That there was a lack of confidence and I think a lack of confidence in the administration was growing. Then to my fear that this was — could be used in an oppressive fashion — I didn't say that it would be, but it could be — it doesn't lead to confidence.

MR. WALTON: Did it in fact engender that feeling in teachers?

[314] MR. BLUE: I know that it did in me. I didn't enjoy it. I didn't feel that I should complain about it, I didn't mind it.

MR. WALTON: Do you know whether that feeling was engendered in other teachers?

MR. BURR: Object, calls for a conclusion.

MR. WALTON: I'll withdraw that question and ask you another question. Have any other teachers advised you, or have you heard other teachers state that it engendered that feeling in them?

MR. BLUE: Yes, sir.

MR. WALTON: Now, just a moment. I believe there's an objection, Mr. Casey, I would appreciate a ruling.

MR. CASEY: Will you restate that question, Mr. Walton?

MR. WALTON: Yes, sir. I will restate it sir, and I will attempt to restate in an even more acceptable form with your indulgence. Do you know, did any teachers ever indicate to you what reaction was engendered in them by this monitoring system?

MR. BLUE: Yes, sir.

MR. WALTON: Now, before you answer Mr. Casey would like to rule.

MR. BURR: Well, answer him.

MR. WALTON: Well, all right, what did they say?

MR. BLUE: I heard one teacher make the comment

MR. BURR: Before you start telling what one teacher said, I'd like to know who it was, if we're going to insist on interjecting this rank hearsay, I'd like to know who it was and if that teacher's available for examination. And if she is, or he is, I should like to have that teacher called as a witness in lieu of having this recitation secondhand.

MR. WALTON: What was the teacher's name, please, sir?

MR. BLUE: Mr. Watts made one comment on it to me.

MR. WALTON: Anyone else?

MR. BLUE: I heard Mrs. Lowell speak of it also.

MR. WALTON: Do you know where Mrs. Lowell is?

MR. BLUE: She's not in town — I believe she's in New York at the moment.

MR. BURR: I'm going to object to the statement

of Mrs. Lowell, it's obviously hearsay. Hearsay of such a character that I feel that even the administrative board should refuse to entertain it.

[315] MR. WALTON: Mr. Casey, the purpose of my question is not just to prove the truth of what Mrs. Lowell might have told Mr. Blue, but rather, this is the issue, rather was the Open Letter irresponsibly drafted, in fact were there statements, the basis of which the letter was drafted. The question is could — one of the questions in this controversy is were the statements in this open letter capable of being substantiated? I now ask Mr. Blue, in fact, what members of the AFT were told to demonstrate that these allegations were capable of being substantiated. At least by the statements of other teachers. Mr. Burr has objected, apparently on the grounds of hearsay. I submit that strict rules observance are not applicable here. The Board has already realized that and I think Mr. Burr would request a ruling.

MR. BURR: Let me withdraw the objection. That would make it easier. Mr. Casey, let me withdraw the objection.

MR. WALTON: Can you answer the question, sir?

MR. BLUE: Yes. She made reference to it and to something that she had done to the speaker and listening device — that she had put something on it, I don't remember if it was a big pair of ears, or something of that nature.

MR. BURR: I don't know that this elaboration is required, Mr. Walton. The complaint was made, I have no objection to that. He recited this second handed, let's not elaborate — unless we're going to bring this witness back for examination.

MR. WALTON: Now, Mr. Blue, is there anything which you can add to the testimony which has already been elicited with respect to paragraph 8 of the Open Letter pertaining to Mr. Smith. If there's nothing new which you can add, please advise the Board. If there is anything new you can add, please do so.

MR. BLUE: It's been testified to before, it's in the record rather completely that is, the first hearing, and it's all been referred to in this one.

MR. WALTON: With respect to paragraph 9 of the Open Letter, sir, is there any information which you can furnish this Board

MR. CASEY: Excuse me, Mr. Walton — Mr. Blue could you talk a little louder, the secretaries can't hear you.

MR. BLUE: Yes, sir, I'll try to.

MR. WALTON: Is there anything new that you can add to the testimony which has previously been elicited with respect to paragraph 9 of the Open Letter?

MR. BLUE: It's been covered in the original hearing rather thoroughly and Mr. Fabricius made a rebuttal to it already in this testimony, I think it's completely covered, sir.

MR. WALTON: Is there anything with respect to Mr. Fabricius testimony in this hearing which you comment on.

[316] MR. BLUE: I could just put out that Mr. Fabricius said this was a matter for administrative judgment, if I remember correctly, also that he had consulted Mrs. Lowell who was the Drama teacher about it, and I believe she stated that she did not have sufficient material or didn't want to attend the festival or something like that. Now, I suppose, that Mr. Fabricius generally is right in his statements to that effect, but teachers are interested in schools and their activities. That's what teachers are for. They want to know what goes on in the schools, what the school is going to do, we feel that information should be at least made available to the teachers. It was not our decision, I grant, without argument, but there had been a great deal in Drama before in this same thing. When it was brought to my attention, I'd heard nothing about it and I wanted to find out. Since Mr. Condor previously had been associated with the dramatic activity and attended the previous Drama Festival with some distinction, I thought it should be continued, but I said nothing to the Superintendent about it.

MR. WALTON: Why not?

MR. BLUE: Pretty largely because I'm a diffident

person by nature for one thing, and in the second place because the matter of communication was and hadn't been an easy thing to accomplish with Mr. Fabricius shortly after his coming here. And I believe that other teachers perhaps even less diffident than myself, felt that Mr. Fabricius was very difficult to exchange ideas with. I know personally I approached him only when I had business to do so. Because I had heard of cases where — and I knew of cases where teachers were rather harshly handled and I wanted to avoid that.

MR. WALTON: I believe, Mr. Blue that the Board's attorney will request the Board to include in its record the proceedings of the April 8th hearing. Are you prepared to let the testimony on that hearing with respect to paragraph 9 stand in this hearing if it's agreeable to the Board?

MR. BLUE: I'm not quite certain that I understand your question, Mr. Walton.

MR. WALTON: Mr. Blue, I want to avoid unnecessary repetition and prolongation of this hearing, if possible. You have in the April 8th hearing, I believe, testified to the matters pertaining in paragraph 9, have you not?

MR. BLUE: Yes, sir.

MR. WALTON: Are you prepared at this hearing, while under oath, to reaffirm all the matters which you there stated?

MR. BLUE: Yes, sir.

MR. WALTON: And if the Board is agreeable to accepting that transcript in evidence as part of the record in this case, are you prepared today to let that be your testimony with respect to paragraph 9?

MR. BLUE: Yes, sir, I am.

[317] MR. WALTON: Can you furnish the Board, sir, with any information that it does not already have with respect to paragraph 10 of the Open Letter?

MR. BLUE: I cannot add further to that, no, sir.

MR. BURR: I didn't hear your statement?

MR. BLUE: I cannot add further to that.

MR. WALTON: You have, sir, also been charged

by this Board as having participated in the circulation of a petition for the recall of School Board members on charges that could not be substantiated and which were allegedly false.

MR. BLUE: I have, sir.

MR. WALTON: You have heard Mr. Swick's testimony with respect to those?

MR. BLUE: Yes, sir, I have.

MR. WALTON: Had the questions which I posed to Mr. Swick, been posed to you, sir, would your answers be substantially the same?

MR. BLUE: Yes, sir, they would.

MR. WALTON: Perhaps, Mr. Burr, we can stipulate to that for the record?

MR. BURR: For the record I'll accept your stipulation.

Also accept the stipulation that your proposal that the entire — I should like to request that the entire transcript of the past hearing be accepted, including Mr. Blue's and Mr. Watts' testimony. And should also like for the record to state that you also waive your objections as earlier raised to the effect that it was not under oath. If it is to be adopted, I'm assuming

MR. WALTON: Well —

MR. BURR: I don't know if that would add or detract anything to the testimony.

MR. WALTON: Mr. Burr and Mr. Casey. Our position on that is this, and I think we're agreed, that we cannot very well stipulate that those matters that were testified to were testified to under oath, because they weren't. We are agreeable however to letting that be part of the record so that this Board may consider it for whatever it is worth. Isn't that really sufficient?

MR. BURR: Together with all the other witnesses who appeared in the prior proceeding.

MR. WALTON: We are agreeable to permitting the Board to consider that transcript in its determination.

MR. BURR: In its entirety?

[318] MR. WALTON: Yes, sir.

MR. BURR: I would like to have it go forward as an exhibit as I have earlier indicated.

MR. WALTON: No objection, sir.

Mr. Blue, you have also been charged by this Board by having engaged in clandestine activities, can you state, sir, whether or not that is truthful?

MR. BLUE: I believe there was some sort of definition of the term clandestine. As I understand it, it means both secret and underhanded, or designed for the purpose of doing wrong, something wrong. If that is the case, I have never attended any clandestine meetings. If a clandestine meeting is merely a secret meeting, then of course I, or a meeting for a specialized group, I of course have attended many of them.

MR. WALTON: There was earlier in this hearing, sir, some testimony, I believe with one by Mr. Fabricius with respect to a conversation had by you and Mr. Poling concerning yourself. Can you please refresh the Board as to what you understood Mr. Fabricius to have said, and then would you like to comment on the same?

MR. BLUE: Mr. Walton, if you will remember, I was absent from the meeting for a period, and that must have been the time when that testimony was given. I have seen it, I'm not sure that my memory is clear on it. Perhaps that portion of — or shall I just go ahead generally as I remember it?

MR. WALTON: Well, have you been advised as to what Mr. Fabricius has testified with respect to your alleged conversation with Mr. Poling?

MR. BLUE: Yes, sir, I have.

MR. WALTON: Would you like to comment on it.

MR. BLUE: Yes, sir. As I remember this comment, and of course this may be subject to a slight misstatement, Mr. Fabricius said that he did have a conversation with Mr. Poling, referring back to the Spring of 1959, at which Mr. Poling alleged that I had said something to the effect that we had heard about

him before he came here, and that we wouldn't be able to work with him, and therefore we were going to attempt to get him or have him removed or something like this.

MR. WALTON: We, referring to whom?

MR. BLUE: Well — no, I think the word was they, not we.

MR. WALTON: Is there any — did you in fact have such a conversation with Mr. Poling?

MR. BLUE: I had a conversation with Mr. Poling but the substance of the statement is obviously absurd, and impossible.

MR. WALTON: Where did you have this conversation and when?

[319] MR. BLUE: I had a conversation with Mr. Poling at a meeting in the Civic Center here in Seward, I believe it was May the 20th

MR. WALTON: What year?

MR. BLUE: 1959

MR. WALTON: Who was present?

MR. BLUE: This was a public meeting to which the School Board and the Administration were invited to discuss their grievances.

MR. WALTON: Did anyone overhear your conversation to your knowledge?

MR. BLUE: With Mr. Poling? I don't know — possibly there were members present who did — there was nothing secret about them.

MR. WALTON: You don't know any of them?

MR. BLUE: Oh, Mr. Swick was there, Mrs. Winninghoff was there, Mr. Watts was there. A fairly good sized segment of the town. The School Board was not there nor were the administrators.

MR. WALTON: How long did this conversation last?

MR. BLUE: Oh, intermittently, perhaps we exchanged words amounting in total to three or four minutes.

MR. WALTON: Very well. Now what — was anything stated during this conversation such as that which has been ascribed to you?

MR. BLUE: No, sir. I wanted to complete the comment. If Mr. Poling said I, for example, had any such intention, prior to Mr. Fabricius' coming, it was utterly impossible because I wasn't here during the summer of 1958.

MR. WALTON: Where were you?

MR. BLUE: Shortly after school was out, in the month of May, I went out to Colorado to attend school and I didn't return to Seward until two days before school started and I don't believe I met Mr. Fabricius personally until the first day of school. So, obviously, I couldn't possibly have entertained such an idea.

MR. WALTON: In circulating — did you, sir, have any part in the circulation around to members of the public, of the open letter, Board's Exhibit 7?

MR. BLUE: Yes, sir.

MR. WALTON: In doing so, you yourself — or have you ever felt that such activity was immoral and brought disagrace upon you or the teaching profession?

MR. BLUE: No, sir. I felt that there was a moral obligation involved in the matter of making this thing public.

MR. WALTON: Will you explain that?

[320] MR. BLUE: In my function as a teacher of Social Studies, I have the responsibility of teaching such things as freedom of speech, freedom of in general, the American tradition of democracy. As a matter of fact, in becoming involved in the whole teacher's controversy, this underlay the entire motivation for my involving myself at all. If I am to teach these things to students, I believe it is my obligation to practice what I preach, if I possibly can. Ordinarily I have not become involved in controversies, but when I saw the 4 non-retained teachers abandoned, without respect to their rights, as I understood it, this was back in the Seward District Teachers Association, I had to make a decision about moral responsibility. Should I shrug my shoulders, laugh it off, well it didn't effect me personally. Or did I have an obliga-

tion to do what I thought was necessary to help protect fellow members of the profession. So I had to make a decision, like it or not. The reason I made this decision was not to please myself, because I don't enjoy controversies. I have not enjoyed this controversy. But how can I teach these values to my students, assuming that I am able to do so, if I refuse to shoulder the responsibility or if my fellow teachers, or my fellow union members refuse to shoulder each responsibility when it is thrust upon us. I believe that young people when they see a teacher whom they often may tend to set up as a pattern, suddenly not acting according to the way the think you should go, then you lose your teaching effectiveness, and as a result, you can't do the job best that you're supposed to do. So I felt that I owed this to the teaching profession generally. I thought that we as AFT members, and SDTA members owed this to the teaching profession generally, to try to correct the things that were going on in our school which we did not think were in the democratic tradition.

MR. WALTON: Do you feel that it was inconsistent with your responsibilities as a teacher to circulate a petition seeking the recall of members of this Board?

MR. BLUE: No, sir, I do not. The reason for this is that the seeking of recall is the ultimate step. We made attempts to communicate with the Board the grievances that we had. I think they have been embellished somewhat in this hearing. We were unable to get this information to the Board even as late as the May 8th hearing, and we were unable to do so. So following that, following the publication of the Open Letter, which secured nothing but public information, then we had to resort to recall, and this was precipitated by a further, oh, I'd call it firing, the seeming firing of Mr. Swick and the demotion of Mr. Smith. This precipitated this. Also the teachers — I'll go up to that point.

MR. WALTON: In the notice of non-retention, the bill of particulars which the Board had served upon you back in March, 1960, you were charged with hav-

ing circulated the Open Letter with the intent of injuring the professional standing of the Superintendent. Was that your intent?

MR. BLUE: No, sir, it was not my intent.

MR. WALTON: What was your intent?

MR. BLUE: Nor was it our intent. My intent was to establish communication since we could not establish communication with the Board privately, then we felt that the public had to know. It was a Public School [321] System. We had tried to keep matters, so to speak, within the family first, we were unable to do so, therefore the next step was to try to get the public to call the School Board to consider those problems and solve them.

MR. WALTON: You are also charged with that Open Letter, by intending to destroy community and pupil confidence in the administration of schools. In fact, was that your intention, sir?

MR. BLUE: No, sir. It was quite the opposite of our intention.

MR. WALTON: It is further alleged in the open — pardon me — in the notice of non-retention bill of particulars, addressed to you, that such statements did tend to destroy community confidence in the management of school affairs by the Board. In fact, did the statements have that effect?

MR. BLUE: I don't know what the total reaction was about the community.

MR. WALTON: Do you believe that the results of the recall election vindicated the Board in its administration policies, or with respect to any of the matters which are the subject of this hearing?

MR. BLUE: No, sir, I believe that the recall only established that some 15 months later the people were retained in office. That's all it established as far as I can see.

MR. WALTON: No further questions.

MR. CASEY: We will recess for 5 minutes. 2:00 PM.

The meeting will be reconvened. Proceed, Mr. Burr, please.

MR. BURR: Mr. Blue on direct examination you stated that it was your desire to establish a better communication with the School Board. Is that correct?

MR. BLUE: Yes, sir.

MR. BURR: And with that in mind you had Mr. Ervine, the lawyer from Anchorage, sitting in one of your hearings in the Spring of 1959?

MR. BLUE: Yes, sir.

MR. BURR: Is it true that Mr. Ervine advised your group, including yourself, against the public distribution of Exhibit 7 — Board's Exhibit 7?

MR. BLUE: I don't remember that he did, sir.

MR. BURR: Is it possible that he did and you don't recall?

MR. BLUE: Everything is possible, but I feel certain that I would have remembered if he had.

MR. BURR: Would you have needed his advice if this were established?

MR. BLUE: His advice not to introduce it to the School Board?

MR. BURR: Not to publicize it, Mr. Blue.

[322] MR. BLUE: Not to — oh, I beg your pardon, I misunderstood the question. I'm sure we didn't discuss that.

MR. BURR: You did not discuss it?

MR. BLUE: Quite certain.

MR. BURR: Well, had he instructed you not to publicize this document, would it have made any difference?

MR. BLUE: Well, one hires an attorney usually to give serious thought to the attorney's advice. It's a hypothetical, it's very difficult for me to get my teeth into it. Mr. Burr has his reasons, I suppose.

MR. BURR: Mr. Blue, whose idea was Exhibit 7 — this open letter, originally?

MR. BLUE: I don't know, sir.

MR. BURR: Was it yours? You have to think about that, Mr. Blue?

MR. BLUE: Yes, sir, I do because you understand this was a group action.

MR. BURR: Well, you don't have any doubt about it not being yours?

MR. BLUE: As a member — I was a member of the group — I was one who discussed it. I helped prepare for it. I accept my responsibility, such as it may be, for it. I'm not sure I originated it, it is possible.

MR. BURR: Isn't it true that you actually spearheaded this whole move in your group to prepare and distribute Exhibit 7? That you were the motivating force behind the group that ultimately did prepare it and distribute it?

The brains — the brains so to speak, Mr. Blue.

MR. BLUE: Thank you, sir, I wished I deserved that, but I'm afraid that it can be proved contrary. The manner in which the group — the AFT came about was a spontaneous movement engendered with the breakdown of the Seward District Teacher's meeting. And I was one of those who helped in the formation of the Union, but as actually spearhead, it was not I who actually made the first step in that direction.

MR. BURR: Who was it, Mr. Blue?

MR. BLUE: It was Mr. Swick who secured the petition, which had to be signed by so many members and submitted to the National

MR. BURR: The National what?

MR. BLUE: The National Union of the American Federation of Teachers.

MR. BURR: Oh, in your effort to organize, you mean?

MR. BLUE: Yes sir. And I don't believe I was the first signer, I would gladly have been.

MR. BURR: I'm not talking about — you've made real plain your feelings about the local, to me at least. I was interested in who was the motivating [323] force behind the initiation and preparation of Exhibit 7. Not your efforts to organize.

MR. BLUE: Oh, I can't honestly say that I was or that I was not, but I'm willing to give an affirmative answer just merely in the interest of getting along with it.

MR. BURR: You're willing to state that you were the motivating force behind the preparation of Exhibit 7?

MR. BLUE: If it will serve so that I don't happen to remember this detail, I wouldn't quibb about the responsibility, no.

MR. BURR: And would that likewise apply to your co-respondent, Mr. Watts?

MR. BLUE: I can't speak for Mr. Watts.

MR. BURR: He is your co-respondent and since he was associated with you in the preparation of this document, was he not?

MR. BLUE: He worked with us, yes.

MR. BURR: And he likewise assisted in the distribution of this document to the public at Seward?

MR. BLUE: He did.

MR. BURR: You heard Mr. Fabricius testify earlier in this hearing, I believe it was last week when he testified, and we went through point by point with him, and as I remember, the question was put to him, rather specifically, on each item, as to whether or not these matters had been presented to him in the form or in the nature of a complaint.

MR. BLUE: Yes, sir, I remember that.

MR. BURR: And you recall his answer in the negative on each occasion, as I remember. I don't recall any exception.

MR. BLUE: I think not on each occasion. I think that one or two had been submitted.

MR. BURR: Well, with the exception of perhaps 1 or 2, but by and largely he denied that these matters had been brought to his attention in the form of a complaint.

MR. BLUE: In general, yes.

MR. BURR: Well, do you want to take the position at this time that his testimony is not true?

MR. BLUE: What is truth, sir? He has one concept of truth and I have another one.

MR. BURR: I'll take your definition of truth, Mr. Blue. I think a man with your education and background is qualified to distinguish between truth and falsity.

[324] I'd like to believe that anyway.

MR. BLUE: Well, I would too, sir. I would like to believe that Mr. Fabricius is stating the truth as he sees it; as he saw it, and I do not accuse him of deliberately testifying wrongly in his conscience.

MR. BURR: Do you believe that Mr. Fabricius would deliberately tell a falsehood under oath?

MR. BLUE: Only I believe

MR. BURR: Do you believe he would deliberately tell a falsehood under oath, yes or no

MR. BLUE: Only in self-deception, sir.

MR. BURR: What do you mean self-deception?

MR. BLUE: I think very often we are deceived individually as to what is the truth of the matter

MR. BURR: As you understand it — or as Mr. Fabricius understands it?

MR. BLUE: Well, as he understands it. I don't believe that he is lying for the sake of lying, no, sir.

MR. BURR: But you think he's lying for the sake of anything?

MR. BLUE: I don't think he's lying without having perfectly rationalized himself as being truthful.

MR. BURR: I'm not at all sure I understand you, even yet, Mr. Blue?

MR. BLUE: I'm not at all sure that I understand myself, sir.

MR. BURR: Well, that makes it even more difficult.

MR. BLUE: We are complicated creatures, aren't we?

MR. BURR: I should like to rephrase the question — restate it. Do you believe that Mr. Fabricius would intentionally make a statement which in his judgment and in his mind was not a true and accurate statement under oath?

MR. BLUE: I don't believe he would, sir.

MR. BURR: You recognize of course that your observations of the truth or falsity of the items 1 through 10 in Exhibit 7 is somewhat at odds with his statement?

MR. BLUE: Yes, sir, I realize that.

MR. BURR: Which of you are telling the truth?

MR. BLUE: Perhaps we are both telling the truth as we understand it individually, sir.

[325] MR. BURR: Even though in some cases they appear to be diametrically opposed?

MR. BLUE: Yes, sir.

MR. BURR: But you're both telling the truth?

MR. BLUE: As we conceive it individually.

MR. BURR: Was it your intention by the drafting and distribution of paragraph 5 in Exhibit 7 to bring Mr. Fabricius and the School Board in general in public disagrace?

MR. BLUE: No, sir. It was not.

MR. BURR: Do you believe that making a statement, or making a quotation from another person, in the form of a threat, to get 1/3 of the faculty this year and half of the remainder the next year, in an apparent attempt to purge and purge is in quotes, the faculty. Do you believe that statement would be damaging, if it were true? Damaging to Mr. Fabricius?

MR. BLUE: It might have that side effect.

MR. BURR: Do you believe that the public reading a statement such as that, Mr. Blue, that if they were convinced that it was true, would have a somewhat less attractive opinion of Mr. Fabricius?

MR. BLUE: This is very general when you say the public. I know that some elements of the public would so regard it and other elements of the public undoubtedly look at it in the opposite direction as a witness

MR. BURR: So you are taking the position at this time, Mr. Blue, that the statement in its context in paragrph 5 would not have the result of embarassing Mr. Fabricius and the School Board in the eyes of the public of Seward?

MR. BLUE: I say that was not the intent of the publication, sir.

MR. BURR: But you do concede this is one of the possible effects, side effects, as you call it?

MR. BLUE: I have so conceded.

MR. BURR: And you did — you were aware of that at the time you distributed this document in Seward?

MR. BLUE: I think we were so intent upon establishing communication that aside from ordinary care in trying to be accurate, that perhaps we didn't think a great deal about it.

MR. BURR: But had you devoted any time to think about it you would have derived the same

MR. BLUE: We did devote

MR. BURR: Let me complete my question. Had you taken the time to think about it [326] before you distributed this document, Exhibit 7, you would have arrived at the same opinion that the side effects would be embarrassing to Mr. Fabricius and the School Board. Would you not?

MR. BLUE: It depends upon what paragraph are you talking about, sir?

MR. BURR: The part that I've just quoted to you a moment ago.

MR. BLUE: You mean the threat part?

MR. BURR: Yes.

MR. BLUE: This is met within the realm of public knowledge, sir. It's been so testified.

MR. BURR: Do you understand my question? Had you taken the time to really consider this matter, prior to distributing the doucment to the public, isn't it true that you would have concluded then as you have concluded now, that one of the side effects would have been to embarrass Mr. Fabricius in the eyes of the public and the School Board?

MR. BLUE: I have to stand on what I stand before. It could be a side effect, a regrettable one perhaps.

MR. BURR: And you knew this had you taken the time to think about it, you knew this and were of the same opinion in the Spring of 1959 before you distributed Exhibit 7.

MR. BLUE: No, sir, I would say that we exercised what we thought was care during the period of very great tension possibly. We would have toned it

somewhat for the very reason you state, had the situation not been so fraught with emotion, high feeling, reaction to threats, made with reference to there, and all the rest of it.

MR. BURR: What you are saying, Mr. Blue, is at this time your opinion now as to what effect this had on the public is somewhat different than it was in the spring of 1959?

MR. BLUE: It may have undergone a slight modification.

MR. BURR: For the worse?

MR. BLUE: Tangibly, sir, until you raised the question, it had not been paramount in my thoughts. As I said before this was an attempt to communicate, to solve the problems. We tried to do it quietly, then when we could not accomplish this, then this seemed the next logical step to go to the public.

MR. BURR: Conceding here, as you now do, that the statement I have quoted from paragraph 5 in Exhibit 7 had a side effect of embarrassing Mr. Fabricius and the School Board, would it not have been a wise course of action, a prudent course of action for your group to have considered this matter more seriously before you distributed Exhibit 7 to the public of Seward?

[327] MR. BLUE: I think that everything of that nature should be considered seriously, sir, and if you will remember we were operating under a very strict time and during that period of time, also.

MR. BURR: Is your answer yes or no, Mr. Blue?

MR. BLUE: Can you restate your question again so that I can

MR. BURR: Would it or would it not have been a more prudent course of action to seriously consider the side effects of this document on the public of Seward before you distributed the document to them.

MR. BLUE: It would have been more prudent, yes, sir, to have considered. Excuse me just one moment please.

MR. BURR: You testified on direct examination that you were not personally aware of the statement

in paragraph 5 in Exhibit 7, which is attributed to Mr. Fabricius in citing his threat to get 1/3 of the faculty.

MR. BLUE: I never heard him make that remark, sir.

MR. BURR: Where did this information come from?

MR. BLUE: I heard it from — I believe Mr. Swick has already testified to it here.

MR. BURR: Mr. Watts?

MR. BLUE: Yes, sir.

MR. BURR: Where did Mr. Watts hear it? Did Mr. Watts hear it from Mr. Fabricius?

MR. BLUE: I don't recall what Mr. Watts said the source was — I think he so testified.

MR. BURR: Assuming this was brought to your attention by Mr. Watts, would you consider it a matter of such gravity that you would be compelled to discuss the matter with Mr. Fabricius in his position as Superintendent?

MR. BLUE: You mean if Mr. Watts or anyone said such a statement were made about him, that I would consider it proper to mention it to Mr. Fabricius? If this were a matter of idle gossip, which I didn't give any particular credit to, and if I were on such terms of communication with Mr. Fabricius that I thought I could discuss it with him quietly. If I regarded it as merely idle gossip I would certainly wait. But I thought that it was something that was an untrue statement or a designed statement of some sort, and if my relationship with Mr. Fabricius were such that I felt I could bring it to his attention, certainly I would have mentioned it to him.

MR. BURR: Did you ever ascertain from questioning anybody besides Mr. Watts your co-respondent, to check and determine the validity of this [328] statement that is attributed to Mr. Fabricius, for instance, by asking him?

MR. BLUE: By this time, sir, we regarded Mr. Fabricius as somewhat unapproachable.

MR. BURR: Did you or did you not ask Mr.

Fabricius or anyone else besides Mr. Watts whether or not if in fact this statement was made?

MR. BLUE: I did not ask Mr. Fabricius whether or not he made this statement. In the Union we discussed it generally.

MR. BURR: And this discussion generally among the Union was sufficient in your mind to bring this matter to the public form in Seward without so much as bringing it to the attention of the man from whom it came, according to your people

MR. BLUE: As I have told you, sir, all of the material contained in here, we attempted to communicate and we certainly had no intention of not communicating with Mr. Fabricius except we thought we would run into hostility, that we could not establish communication.

MR. BURR: You stated that you taught Social Studies in High School?

MR. BLUE: Yes, sir, that's correct, sir.

MR. BURR: Did you teach your students that it's proper and consistent with democratic procedures to assassinate in a public form the character of a man without so much as bringing the matter to his attention first.

MR. BLUE: I did not discuss this matter with the students, sir.

MR. BURR: Would you teach such a

MR. BLUE: I would not.

MR. BURR: And yet you did in fact do this on this occasion?

MR. BLUE: Will you repeat the question, please?

MR. BURR: You did in fact publish a statement about Mr. Fabricius without bringing the matter to his attention first?

MR. BLUE: I participated in the preparation, publication and distribution of this document, part of which I helped to prepare — part of which others prepared. It was all prepared as far as we could determine in a truthful manner and it was an ultimate and last — merely a last resort to resolve a very serious problem that effected the lives of.

a great many people and which already had the town in a furor.

MR. BURR: I believe you also mentioned that you tried to instill in your students the precepts of democractic procedure and constitutional rights such as Freedom of Speech?

MR. BLUE: Yes, sir.

[329] MR. BURR: Do you believe that Freedom of Speech includes the making of public statements about a man's character of the nature that's set forth in paragraph 5 of Exhibit 7?

MR. BLUE: You said of the nature?

MR. BURR: Don't quibble over my question. If you don't understand them, I'll restate them, Mr. Blue. You are just unnecessarily prolonging this hearing.

MR. BLUE: That's not my intention, sir. Perhaps you can understand that I want to be as accurate as I can, if I'm hesitant, I'm sorry, it's not for the purpose of frustrating you. Will you ask me the question again, please?

MR. BURR: Do you have the question down? Question read back to Mr. Burr.

Do you believe that the Freedom — that the right, that what we recognize as a constitutional right of freedom of speech includes the right of any person to make a public statement of an adverse nature about another person's character?

MR. BLUE: In special circumstances, sir, I believe it's a moral right.

MR. BURR: Do you believe it's a constitutional right — I'm not talking about moral rights, Mr. Blue.

MR. BLUE: I believe that as a constitutional right, one does have the right to make a statement which may be adverse to a person's character, if this is on a very serious and important matter, and if it is something that the speaker regards as being necessary to be brought to the attention of the public.

MR. BURR: Do you believe that it is likewise within the purview of the freedom of speech to make statements which are not direct statements, and by

that I mean are statements concerning which you are not certain as to their truth or falsity, or the effects of the statement.

MR. BLUE: Sir, as I have testified we believed that these statements were true.

MR. BURR: I direct your attention to paragraph 6 where you make the statement and I quote "the apparent authoritarian mishandling of this resignation impairing the teacher's chances for a teaching position elsewhere"

MR. BLUE: It is qualified for the reason that we wanted clarification on this point and we were unable to get it still from the lack of communication.

MR. BURR: Well, in spite of this lack of information and lack of justification, you made reference to the apparrent authoritarian mishandling of a situation which was the responsibility of the Superintendent?

MR. BLUE: We made that reference, yes.

MR. BURR: Which had the side effect of imputing to the Superintendent a lack of proper conduct in office.

MR. BLUE: That seemed to be the case, sir.

[330] MR. BURR: And this too is consistent with your thinking of freedom of speech as a constitutional right?

MR. BLUE: Well, sir, let me generalize

MR. BURR: I don't want you to generalize, I want you to be specific

MR. BLUE: I know — but you're asking me about something that has a very broad application, are you not?

MR. BURR: Well is this, or is this not consistent with your definition of the rights of freedom of speech?

MR. BLUE: In this case, sir, I believe that this paragraph is consistent with the exercise of the rights of the freedom of speech. In fact, it's responsibility.

MR. BURR: In direct examination we were discussing, you were discussing with your counsel, the inter-com system set up in the high school building of Seward. By which the Superintendent or anyone

in the front office can listen over the inter-com to the several classrooms.

MR. BLUE: So I was informed, sir.

MR. BURR: What was — let me rephrase this — this was a system designed to communicate between the front office to various classrooms, is it not, Mr. Blue?

MR. BLUE: Yes, sir. It can be used for that purpose.

MR. BURR: Is it used for any other purpose such as the communication of public addresses, the playing of baseball games, for the students

MR. BLUE: Yes, sir.

MR. BURR: And the making of announcements?

MR. BLUE: Yes, sir.

MR. BURR: And the monitoring of classroom conduct?

MR. BLUE: I don't know if it was ever used as a monitoring system, or not.

MR. BURR: Would you consider this to be an improper use of this system?

MR. BLUE: Not if the class to be monitored or audited were informed by a buzzer.

MR. BURR: Do you consider — do you consider the monitoring of classroom conduct to be an intrusion upon your rights of privacy, for instance?

MR. BLUE: No, sir.

MR. BURR: So your classroom is not such a private institution that it can't be audited or monitored by the Superintendent who is responsible for your conduct. Is it?

[331] MR. BLUE: I don't believe that the administrator is responsible for my conduct, is he?

MR. BURR: I'm asking you. Wouldn't you consider a Superintendent to be generally and overall responsible for the conduct — the professional conduct of the teachers under his jurisdiction?

MR. BLUE: In certain areas, perhaps.

MR. BURR: Such as teaching qualifications?

MR. BLUE: Determining what they are?

MR. BURR: Yes. And can you think of a better

way than listening to the teachers than hearing somebody else tell them about it?

MR. BLUE: It's perfectly acceptable.

MR. BURR: But it's first hand, isn't it?

MR. BLUE: Yes, it is.

MR. BURR: Can you think of a better system than listening to determine whether or not a teacher is — whether the techniques utilized are consistent with the techniques as he understands them.

MR. BLUE: The proper techniques, sir, I don't believe I can quite accept that statement.

MR. BURR: Well do you believe there's something wrong with his monitoring a classroom? To determine whether or not in his judgment it is being properly supervised?

MR. BLUE: Do you mean do I believe he has been monitoring?

MR. BURR: Do you believe that it would be improper for him to do that, assuming that he did.

MR. BLUE: I'm not assuming that he did, sir.

MR. BURR: Well, let us assume that he did — on several occasions — if he did do this would you consider it to be an improper utilization of this electronic equipment which was designed for that purpose among other purposes?

MR. BLUE: Not necessarily, sir, no.

MR. BURR: Then why do you impute an improper conduct on the part of Mr. Fabricius for listening in to the classrooms as you suggested on direct examination?

MR. BLUE: My statement there is based on a rather subjective thing. I believe that when a teacher has taught successfully over a period of time.

MR. BURR: Successfully in whose judgment, Mr. Blue?

MR. BLUE: Well, in the judgment of his students, let us say, after the fact considerably. If a teacher has been even adequate in a system [332] over a period of time, I don't believe that it is a necessary thing to monitor him. The objection is not to the monitoring per se for the sake of monitoring to get-

ting information. I believe in getting information is a good thing. I was thinking more of the classroom situation, which is a very intimate subjective one of communication or rapport between teacher and students. Sometimes in this connection, the desired result occurs and some times it doesn't, I think we have to recognize that generally. We hope that it occurs in all cases, we know that it doesn't. And in the learning process, pretty largely, I believe there has to be a comfortable situation whereby communication can take place. Now, if you hear or suspect that you are being eavesdropped upon, to this extent, it creates this doubt like I said in the teacher, and maybe in the student, I can't say for apparent, but I think it fits in the actual learning process.

MR. BURR: Well, I should like you to confine your testimony

MR. BLUE: Let us say in the teacher's mind when he feels he may be eavesdropped upon, or is being eavesdropped upon, it would tend to make it more difficult for him to do the job he wants to do as effectively as he wants to do it.

MR. BURR: Did you believe the monitoring of your classroom impeded or interfered with the establishment of rapport between you and your students?

MR. BLUE: I don't know that there was monitoring, sir?

MR. BURR: Then, why did you complain of it then?

MR. BLUE: Because of this feeling — that is the youngsters would point out to it themselves — it is one of these things that goes around.

MR. BURR: As a matter of fact, if this monitoring took place, why did you suggest on direct examination that this monitoring that you defined was some of the dictatorial treatment that you described in paragraph 7 that forced the teachers into the choice of submitting and taking it at the loss of personal dignity.

MR. BLUE: I think there's a matter of construction here — monitoring is not necessarily dictatorial

treatment — in fact, I do not state — the term dictatorial here possibly is open to a little further definition.

MR. BURR: Why did you not define it more clearly in your statement then? In your statement, Exhibit 7, to the public, if you felt it was not self-explanatory?

MR. BLUE: There are elements of this complex which are dictatorial, this particular statement relative to monitoring, is not necessarily dictatorial, or it may be related to it.

MR. BURR: Was it a loss of personal dignity in the teacher?

MR. BLUE: You mean the use of a monitoring system or the presence of a monitoring system?

[333] MR. BURR: The thought that you might have somebody eavesdropping on you? Is that a loss of personal dignity?

MR. BLUE: It certainly doesn't contribute to it, sir.

MR. BURR: Is that a loss of personal dignity to the teacher?

MR. BLUE: Perhaps — I would say in a slight degree.

MR. BURR: Did you ever bring this objection to the attention of Mr. Fabricius?

MR. BLUE: As I say sir, unless it was something of a necessary business, I didn't approach Mr. Fabricius.

MR. BURR: You didn't approach him about it, but you saw fit to bring it to the attention of the public at Seward? As a complaint?

MR. BLUE: No, dictatorial treatment, not the monitoring system.

MR. BURR: Well, maybe I misunderstood you, I thought that your counsel had reference to paragraph 7 when he asked you was there anything else, Mr. Blue, that you were unhappy about, and you went on to elaborate on this eavesdropping technique on the monitoring — on the system.

MR. BLUE: I did that sir.

MR. BURR: Well, was that part of what you were talking about in paragraph 7, or wasn't it?

MR. BLUE: Well I must state that I don't regard monitoring as necessarily being dictatorial.

MR. BURR: Well, did it create friction — what you constituted as a loss of personal dignity?

MR. BLUE: It certainly created friction within me as a teacher, yes.

MR. BURR: Just exactly what were you talking about when you said that dictatorial treatment of teachers forcing them into the choice of submitting and taking it at the loss of personal dignity. What were you talking about, Mr. Blue?

MR. BLUE: This certainly would be directly applicable to the situation of Mr. Condor, or people who negotiated with the School Board, or attempted to in the matter of the non-retention. I think that's what that paragraph referred to specifically.

MR. BURR: What is this loss of personal dignity? What loss of personal dignity did you encounter personally?

MR. BLUE: I didn't encounter any great loss of personal dignity, personally.

MR. BURR: Well, personally, then would you say that the system under Mr. Fabricuis at the time that you were fortunate enough to be a member of this system, was satisfactory?

MR. BLUE: Monitoring system satisfactory?

[334] MR. BURR: No, the whole school system.

MR. BLUE: No, I would not make that claim, sir.

MR. BURR: Well, did you lose any personal dignity at the time you were under the — a member of this teaching system?

MR. BLUE: Yes, sir.

MR. BURR: What? How, when and where?

MR. BLUE: In the Fall of this year

MR. BURR: 1960?

MR. BLUE: Yes, sir. I came to the school

MR. BURR: This is after the facts now, I'm talking about the Spring of 1959, now.

MR. BLUE: I withdraw what I started to say. I did not personally receive that treatment, sir.

MR. BURR: Do you know of anybody — any

teacher in particular that had a loss of personal dignity as a direct result of what Mr. Fabricius or the School Board did?

MR. BLUE: I heard Mr. Richardson testify that he had a rather unpleasant day.

MR. BURR: Mr. Richardson? Monte Richardson? That he had a rather unpleasant day? That constitutes a loss of personal dignity?

MR. BLUE: He had an unpleasant day in connection with a conversation with another person. A possibility of a loss there, I think.

MR. BURR: Did Mr. Richardson authorize you to tell the public of Seward that he had a loss of dignity as a result of having a difficult day?

MR. BLUE: I have no authorization from Mr. Richardson. I'm referring to something he testified to, sir.

MR. BURR: Well, I'm referring to the statement you made to the public of Seward. I want to know who that you were referring to, here?

MR. BLUE: In the matter of dictatorial treatment of teachers?

MR. BURR: No. I'm talking about the loss of personal dignity now.

MR. BLUE: Oh, loss of personal dignity. Well, I would say that Mr. Condor suffered a loss of personal dignity.

MR. BURR: Because he resigned?

MR. BLUE: It was the manner of his resignation.

MR. BURR: And you're personally aware of the circumstances surrounding his resignation?

[335] MR. BLUE: Only as reported to me by him, after that occurrence.

MR. BURR: You have seen his resignation as an exhibit in this record, have you not?

MR. BLUE: No, sir, I have not. I have only heard about it.

MR. BURR: Well, in any event, do you consider the resignation or the departure of Mr. Condor from the Seward School Board System as a loss of personal dignity for him?

MR. BLUE: So he reported it to me, not in those words, but I gathered that from what he said.

MR. BURR: So this is your observation of what happened to him — not Mr. Condor's observation?

MR. BLUE: His report to me of what he said happened.

MR. BURR: Did he say he had experienced a loss of personal dignity by virtue of his departure from the Seward School Board System? Or did he not?

MR. BLUE: He did not make that direct statement.

MR. BURR: But you saw fit to tell the public of Seward what happened and that was your opinion of what happened?

MR. BLUE: I participated as one of 18 members publishing that statement, sir.

MR. BURR: Board's Exhibit 17. Does Mr. Condor make any reference, Mr. Blue, in his resignation which you have just examined, about having been forced at the instance of Mr. Fabricius or the School Board, to lose or suffer from the loss of personal dignity?

MR. BLUE: He makes no reference to it in that letter, sir.

MR. BURR: You know of anybody else, Mr. Blue, that had a loss of personal dignity as a result of this school board or its predecessor, or Mr. Fabricius, or either of them?

MR. BLUE: The matter of four non-rentention, sir, I think that applies here.

MR. BURR: You think it does? Is there any doubt in your mind but what it does, Mr. Blue?

MR. BLUE: No, there isn't any doubt. I would say yes it does.

MR. BURR: Wherein they did lose any personal dignity by being non-retained?

MR. BLUE: When a person is not retained and when he is — that is a professional person, a contractual person is not retained and he is not given the reason for being not retained as the law provides, then as a professional person, immediately this per-

son is impugned, is placed in a situation of having been fired, let go, and I think this very definitely means that their dignity has suffered some loss — he has suffered some indignity.

MR. BURR: But you will concede, will you not, Mr. Blue, that the law provides this manner of discharging teachers for cause?

[336] MR. BLUE: There is a provision by the State that may be discharged for cause, yes.

MR. BURR: And a proceeding such as this is to determine whether or not that cause in the opinion of the Board, in it's appellant form, is, or is not sufficient?

MR. BLUE: I'd concede that. That is when the thing is brought about.

MR. BURR: And this, again is consistent with the democratic process that you mentioned a while ago.

MR. BLUE: That people may be discharged for cause when there is substantial cause?

MR. BURR: Yes.

MR. BLUE: I concede that this is part of it, yes.

MR. BURR: And this is consistent with the democractic process as a manner of discharging a teacher?

MR. BLUE: Yes, when it's carried out in that way, yes, sir.

MR. BURR: So, if it's carried out with substantial compliance with the law, would you not concede that there is not necessarily a loss of dignity, by being involved in one of these proceedings?

MR. BLUE: The person would feel that there is a loss of dignity.

MR. BURR: But the exercise of a statutory right of discharging a teacher, or attempting to so do, is still consistent with democratic process.

MR. BLUE: The way it was done was not consistent with democratic process, sir, because we maintain that it was not legal — not legally done. We have never have heard nor have those individuals heard what the causes were for their discharge nom-

inally. As a matter of fact, sir, one of them, after having been told that she was non-retained, was, not only had her contract renewed, but then was rehired for the following year, subject to continued education

MR. BURR: You stated that you were reluctant to process grievances to Mr. Fabricus at the time you were here?

MR. BLUE: Yes, sir, I said that.

MR. BURR: Did that same situation exist with Mr. Fabricius' predecessor?

MR. BLUE: No, sir.

MR. BURR: Did you any time prior to the coming of Mr. Fabricius to this system, ever process any grievance to his predecessor?

MR. BLUE: No, sir, I don't think so.

MR. BURR: Would you have felt free to do so?

[337] MR. BLUE: Yes, sir.

MR. BURR: Why is it that you didn't feel free to so do with Mr. Fabricius?

MR. BLUE: Well, I personally witnessed the Smith incident which has been referred to here, and I testified on it, for example.

MR. BURR: Well, I should like your testimony on whether or not you ever personally tried to process any of the grievances in Exhibit 7 to Mr. Fabricius?

MR. WALTON: Excuse me, Mr. Casey and Mr. Burr. I don't think the witness had finished answering your last question. Why did you feel you could not process grievances to Mr. Fabricius? Perhaps he would like to answer that question.

MR. BURR: Would you?

MR. BLUE: Would I feel free to do so? I would do so if I felt I could do so with some effect and without getting into an argument with him.

MR. BURR: Well, did you ever try to submit a greivance and get into an argument with him?

MR. BLUE: No, sir, I avoided arguments with him.

MR. BURR: Did you ever try to present any of these grievances to him? Any of them?

MR. BLUE: To the extent that it was a joint action, sir.

MR. BURR: Wait a minute — I want my question answered. Did you or did you not personally ever present any of the grievances in Exhibit 7 to Mr. Fabricius?

MR. BLUE: Personally or individually?

MR. BURR: Yes, personally.

MR. BLUE: Not directly — indirectly.

MR. BURR: Do you know whether or not these were personally brought to the attention of Mr. Fabricius by Mr. Blue for instance — Mr. Watts, I'm sorry. I mean any of the 10 items in Exhibit 7.

MR. BLUE: At any time?

MR. BURR: At any time. In the form of a grievance or a complaint, or whatever you choose to call it.

MR. BLUE: Yes, sir, I do.

MR. BURR: When, sir.

MR. BLUE: Mr. Watts was a member of the Seward District Teachers Grievance Committee, which I believe has already been entered here in which they discussed this matter of illegal non-retention.

MR. BURR: That's one item. Would you say that's true as to all of the others?

[338] MR. BLUE: No, I would not say that is true as to all of the items.

MR. BURR: So there are some items on Exhibit 7 concerning which they were not presented to Mr. Fabricius in the form of a complaint, sir?

MR. BLUE: In the form of a complaint?

MR. BURR: In the nature of a complaint.

MR. BLUE. Well, this letter itself was presented to Mr. Fabricius.

MR. BURR: Yes, it was and at the same time it was submitted to the public of all of Seward.

MR. BLUE: Same time, sir?

MR. BURR: Yes. At least that's what people have said.

MR. BLUE: I've heard that testimony and I've been dwelling on it. I have to go back to approximate-

ly May 18th. You understand to recall has some difficulties here. You remember the circumstances of the distribution of this document. You remember the action that was carried out. Some of them were sent by mail to — one of them was written to people away from Seward — one went to Commissioner of Education, so forth. Mr. Watts was commissioned to take copies to each member of the School Board and to administrators. I don't know what sequence he would do this. Meantime the rest of them were in the process of being prepared for mailing, so if it's sequence you're interested in, I believe that these were presented to Mr. Fabricius and the Board Members prior to being submitted to the mails and ultimately to the public — this is rather mechanical, sir.

MR. BURR: I believe Mr. Watts has testified to that.

MR. BLUE: Well, it's a point we tried to make before — roughly you seemed to be raising the question of sequence that's why I tried to clarify it.

MR. BURR: Roughly they were contemporaneous, weren't they?

MR. BLUE: Well, how widely a space does roughly encompass?

MR. BURR: Oh, anywhere from a second up to a day, I'd say.

MR. BLUE: That being the case — roughly, yes sir.

MR. BURR: In any event they were submitted to the public before the School Board had an opportunity of reading these and taking action on them, again, weren't they?

MR. BLUE: The same material we had tried to present unsuccessfully to them before as I have testified.

MR. BURR: Your answer is yes, then?

MR. BLUE: Will you repeat the question, please?

[339] MR. BURR: This was distributed — Exhibit 7 was distributed to the public prior to any action being taken by the School Board on Exhibit 7 after they had been furnished a copy of it.

MR. BLUE: As far as I know they haven't yet taken action on any of these items.

MR. BURR: So your answer is yes?

MR. BLUE: My answer must be pretty close to the affirmative.

MR. BURR: Yes?

MR. BLUE: If you want to put the words in my mouth, yes.

MR. BURR: It's a difficult question to answer in the affirmative, isn't it, Mr. Blue?

MR. BLUE: Sir, many of the questions, I think are subject to some qualification.

MR. BURR: I notice you experience a little reluctance in answering my questions.

MR. BLUE: Yes, sir I do. Perhaps you'd like to have me explain why?

MR. BURR: You needn't explain.

Do you still believe at this time, Mr. Blue, that the teachers local of the Union, the Federation of Teachers, have the license or the right to communicate to the public a document such as Exhibit 7, before all of the grievances have been submitted to and ruled upon by both the Superintendent and the School Board?

MR. BLUE: The AFT? Do you mean the AFT in its present circumstances?

MR. BURR: I mean the AFT as it existed in the spring of 1959.

MR. BLUE: The AFT decided that that was its responsibility and it did so.

MR. BURR: Well, you're still a member of this organization?

MR. BLUE: I am, sir.

MR. BURR: Can you speak on the behalf of the organization to the extent of expressing an opinion as to whether or not you still consider this to have been a proper course of action?

MR. BLUE: Yes sir, I think so.

MR. BURR: Your counsel asked you whether or not in your judgment the recall election vindicated the Board in the charges of dereliction and your answer

was in your judgment this election did not have that effect.

MR. BLUE: That was my answer, sir.

MR. BURR: Just exactly what do you consider the purpose of that recall election to have been, Mr. Blue?

[340] MR. BLUE: To determine whether or not the public still had confidence or lack of confidence in elected members of the Board.

MR. BURR: What was the alleged grounds for this recall, Mr. Blue, as published by you and your assistants?

MR. BLUE: Non-feasance in office, failure to uphold one's oath of office.

MR. BURR: By non-feasance of office you had in mind, did you not, the very items that were outlined in Exhibit 7?

MR. BLUE: Not necessarily all of them, sir.

MR. BURR: Some of them?

MR. BLUE: Some of them, yes sir.

MR. BURR: You considered these — some of these to be to constitute non-feasance?

MR. BLUE: Yes, sir.

MR. BURR: By non-feasance do you mean the non-performance of a lawfully imposed obligation?

MR. BLUE: I mean exactly that, sir.

MR. BURR: You don't mean — as compared to that — you don't mean the performance in an unsatisfactory manner of a lawfully prescribed duty?

MR. BLUE: Repeat the latter part of that sentence please?

MR. BURR: Well, I'm trying to distinguish the situation between the failure to perform and the improper performance of a duty?

MR. BLUE: I don't believe that non-feasance necessarily includes the violation of law, I believe it means the lack of complying with the law.

MR. BURR: So you weren't charging the School Board with mis-feasance or improper handling of their affairs?

MR. BLUE: We did not so charge.

MR. BURR: Can you tell me some of the items of non-feasance that you had in mind?

MR. BLUE: Yes sir. The first item contained in this Open Letter, Exhibit whatever it is

MR. BURR: Illegal non-retention?

MR. BLUE: Yes sir.

MR. BURR: Wherein was there non-feasance there?

MR. BLUE: If non-feasance means not complying with the law not providing a bill of particulars as provided by law must be non-feasance as I understand it.

[341] MR. BLUE: If the law requires that certain fire drills be held, and they are not held, then to the extent that they are not held according to statute, I believe again that could be construed as non-feasance.

MR. BURR: And by the failure to uphold one's oath in office you are charging them with acting contrary to the oath?

MR. BLUE: Now, sir, if they swear to uphold the law and do not do so, it seems to me that that applies.

MR. BURR: Do not do so in your judgment?

MR. BLUE: No, do not do so.

MR. BURR: In your judgment?

MR. BLUE: I'll accept that, yes for my statement.

MR. BURR: Well, that was the purpose of submitting this matter to the public in the form of a recall election, was it not?

MR. BLUE: Yes, the recall was based on this belief that they had not complied with the law.

MR. BURR: And by virtue of the fact that they were — the public saw fit to retain these people in their election positions, you don't consider that to be a vindication of these charges?

MR. BLUE: No sir.

MR. BURR: So you still consider the Board to be responsible for the dereliction of duty — in spite of the election?

MR. BLUE: Such members as remain sir who were a party to it.

MR. BURR: So this election in your mind was nothing for a condemnation of illegal acts, by the public of Seward?

MR. BLUE: No, that is not exactly my point, sir.

MR. BURR: What exactly is your point? I'm trying to find out.

MR. BLUE: The recall election was carried out 15 months after the fact. The School Board brought action to prevent the recall election and caused the City Council to delay this action. It became necessary to appear before the court, ultimately the, at least the Supreme Court ultimately the Supreme Court gave a decision that the action taken by the Board was not in accordance with the constitution of the State of Alaska and therefore ordered an election, or rather set up the operation to order it through the Supreme Court.

MR. BURR: Mr. Blue, at this time do you personally feel that each member of the Seward School Board System as a teacher has the right as an individual, or as a member of the AFT, when they become dissatisfied with the Superintendent, or any member of the School Board, or the Board as a whole, to prepare or cause to prepare a document such as Exhibit 7 and to distribute this document to the Seward Public?

[342] MR. BLUE: Will you state the question, again, please?

MR. BURR: Do you believe at this time personally that a teacher is licensed to prepare and cause to be distributed a document such as Exhibit 7 to the public at Seward if they become dissatisfied and have certain complaints about the Superintendent or the School Board?

MR. BLUE: Have license to do this?

MR. BURR: Or have a right?

MR. BLUE: Have the right to do that? They have a right to do it after other attempts to clarify the situation has failed, then I feel it becomes an obligation perhaps.

MR. BURR: Your judgment — your opinion is that they have this right?

MR. BLUE: Yes sir.

MR. BURR: They have this right to bring to the

attention of the public statements which you did not personally hear, but you have heard about?

MR. WALTON: Mr. Burr and Mr. Casey, I don't like to obstruct you by objections, but I simply call to your attention that I think that this question calls for a conclusion of law the very purpose of this proceeding is to determine whether or not these gentlemen had a right. This is a question for the Board and possibly the State Department of Education to rule on. It's a question of the statutes, what rights to teachers have. I submit this line of questioning is improper for that reason and will not make a formal reason and will not make a formal objection.

MR. BURR: That's all I have.

MR. CASEY: At this time I think we better stretch our legs a bit — we've been sitting for about a hour and 10 minutes, we better take a break. Recess for 10 minutes, at 3:15 PM. Reconvened at 3:30 PM. The meeting will be reconvened. Mr. Walton, would you like to preceed?

MR. WALTON: May I? Thank you. Mr. Blue with respect to whether or not the matters referred to in the Open Letter were ever first presented to Mr. Fabricius before they came to the attention of the Board. I believe you testified, did you not, that Mr. Pat Ervine attempted to bring the matters contained in the Open Letter to the attention of the Board prior —

MR. BLUE: With exception to two items, yes sir.

MR. WALTON: And you have previously testified to extensive efforts made on behalf of your association to negotiate with the Board? Have you not?

MR. BLUE: Yes sir.

MR. WALTON: And any time during that entire period of protracted negotiations, did anyone ever ask you to first to proceed through Mr. Fabricius?

[343] MR. BLUE: No sir, the idea seemed to be completely ignored. The School Board made responses both to the Seward District Teachers and also to the AFT without making mention of it, so presumably it was perfectly acceptable to them.

MR. WALTON: You have testified on this very delicate question of whether or not you feel Mr. Fabricius might lie, the question which Mr. Burr raised incidentally, I believe you testified you thought that Mr. Fabricius might say something which is not true by way of self-deception. Will you explain what you mean by that? Tell why you answered in that way?

MR. BLUE: Yes sir. We had seen that he had given a good deal of credence to rumors in the past to the effect that somebody was out to get him, or get his contract. He has earlier testified that he thought Mr. Swick was gunning for his job, I believe, and the entire pattern seemed to be one of fearing, or being very much involved in his thinking of the matter of people persecuting him, or being after him,

MR. WALTON: You believe that that was a self-deception in that it was not based on any fact?

MR. BLUE: Yes sir. I didn't hear the original rumor, for example, I certainly never heard Mr. Swick say he was gunning for his job or anything of that sort. I couldn't see what the basis for his theory was except perhaps, it was suspicion of some sort.

MR. WALTON: Mr. Burr has interrogated you with respect to your opinion of the right of a person to speak freely. You feel and I had hoped he might ask, do you feel that teachers have less, or greater, or equal rights of ordinary citizens?

MR. BLUE: I believe that their right to freedom of speech should be identical to all other citizens. in fact, I think that sometimes they may have an obligation in that direction.

MR. WALTON: I believe you were asked whether or not you felt that it was within your right of free speech to circulate the open letter, Exhibit 7, were you not?

MR. BLUE: Yes sir, I was asked that question, yes.

MR. WALTON: Even though it might be adverse to Mr. Fabricius for example?

MR. BLUE: Yes sir.

MR. WALTON: Do you know are there any restric-

tions on when one may speak freely on matters which are adverse to another person?

MR. BLUE: Restrictions are restrictions of ordinary responsibility, sir. Undoubtedly any part of the thing that is being stated is the result of the person being spoken abouts action, when the presumably the responsibility lies on the person of whom you are speaking.

MR. WALTON: Well, how is that a part of this case?

[344] MR. BLUE: Well, Mr. Fabricius made threats which seemed to be substantiated here, so I was told by persons whom I regarded competent.

MR. WALTON: By that you refer to whom?

MR. BLUE: Mr. Watts for example, Mrs. Davis. I did not directly speak to Mr. Trevethan but I have confidence in the person who reported Mr. Trevethan's speech to me. There must have been something in this whole complex to the effect that Mr. Fabricius had made substantially these statements, therefore he must have been responsible for them.

MR. WALTON: As a matter of fact, if Mr. Fabricius did say that the things were true in paragraph 5 of the open letter, are you saying that it would be his responsibility and his problem should it prove embarrassing to him to have it publicized?

MR. BLUE: Yes sir.

MR. WALTON: Are you satisfied that, in fact, that Mr. Fabricius had said the things mentioned in paragraph 5 to this publication?

MR. BLUE: Yes sir, I was convinced of it, because it had been related to me by people whom I regard to be honorable and competent.

MR. WALTON: And they stated that they had heard these things said by Mr. Fabricius?

MR. BLUE: Yes sir.

MR. WALTON: As a matter of fact, Mr. Watts so testified under oath, did he not?

MR. BLUE: He has, yes sir.

MR. WALTON: Unless there by any confusion on the subject of the monitoring device, are we to under-

stand your testimony to be that there is something wrong with monitoring, or rather that the monitoring system caused tension and conflict?

MR. BLUE: I believe the statement I intended to make was that it caused tension.

MR. WALTON: Among whom?

MR. BLUE: Among the teachers including myself.

MR. WALTON: I believe you were also asked why didn't you present some of these extenuative things to Mr. Fabricius personally, rather than seeking to go directly to the Board as was done? Can you answer that question?

MR. BLUE: I experienced — witnesses a situation in which a man came to him with a grievance.

MR. WALTON: Who?

MR. BLUE: Mr. Jerry Smith. I didn't relish the thought of going through the same sort of thing myself, that of being spoken to in a very peremptory tone, in a threatening manner being accused of [345] things before I even had the opportunity of explaining, which was essentially the Smith situation.

MR. WALTON: Do you know of any law, Mr. Blue, which prohibits a teacher's union from communicating grievances to the public?

MR. BLUE: No sir, I don't.

MR. WALTON: Have you learned of any in this course of this proceeding?

MR. BLUE: No sir.

MR. WALTON: Do you feel that teachers are less entitled to complain of a School Board than ordinary citizens, publicly?

MR. BLUE: I think that their position is identical with perhaps this exception, that being closer to the problems that perhaps they should make extended efforts first before publicizing the thing. The very thing we did throughout our history.

MR. WALTON: No further questions.

MR. BURR: No further questions.

MR. WALTON: We would like to call Mr. Watts.

* * *

MR. WALTON: Mr. Watts, I believe you have previously identified yourself, have you not?

MR. WATTS: I have.

MR. WALTON: You're a married man, are you sir?

MR. WATTS: I am.

MR. WALTON: Do you live in Seward?

MR. WATTS: I do.

MR. WALTON: You have lived here now long?

MR. WATTS: Nine years this last time.

MR. WALTON: You have taught here how long?

MR. WATTS: Seven years.

MR. WALTON: You have been a teacher how long?

MR. WATTS: Twelve years.

MR. WALTON: How old are you?

[346] MR. WATTS: Forty-seven.

MR. WALTON: Do you have a copy of the Open Letter in your possession?

MR. WATTS: I have.

MR. WALTON: I refer your attention, Mr. Watts to the second paragraph on page 2 following paragraph 10, wherein reference is made to efforts on behalf of the AFT to correct certain matters. I direct your attention to the meeting of May 8th which has been testified about. Mr. Blue, I believe, has testified with respect to matters there undertaken by Mr. Ervine. Is there anything that you can — any additional information that you can furnish the Board with respect to that question?

MR. WATTS: I believe after one and a half or two hours of discussion, that several people in the audience who had raised the question about grievances or bills of particulars, and no one seemed to know much about it. Mr. Fabricius, I believe, made the statement not verbatim, but to the effect that he would welcome this bill of particulars being brought out with these grievances and find out what they were and see what could be done about them, or something to that effect. And at that time, our attorney, Mr. Pat Ervine, offered every clearly and distinctly to go into the school board chambers with the school board and 1 or 2 other interested parties of the Teacher's Union, to discuss this matter of the bill of particulars and he

was quite sure that our problems could be resolved in a very short time if it was done so. At that time the Board did not answer and finally Mrs. Whitmore I believe brought up the question of she couldn't understand how I had my certificate renewed in Seward for 5 more years.

MR. WALTON: Was Mrs. Whitmore a member of the Board?

MR. WATTS: She was a member of the Board at that time.

MR. WALTON: How many times if you know — I take it that you were there?

MR. WATTS: Yes.

MR. WALTON: How many times, if you know, did Mr. Ervine make this offer to the Board?

MR. WATTS: I know that it was made clearly, it must have been 15 or 20 minutes later.

MR. WALTON: How many times in all?

MF. WATTS: I would say probably — I know of two — and I think it was said three times.

MR. WALTON: And what was the Board's reaction on the first occasion?

MR. WATTS: They ignored it the first time and there was no conclusive answer ever given later on they ignored his request both times.

MR. WATTS: You have heard both Mr. Swick and Mr. Watts — Mr. Blue, pardon me, testify as to the truth or lack of truth of matters set forth in [347] the open letter. Have you not?

MR. WATTS: Yes.

MR. WALTON: With respect to paragraph 5 of the open letter, can you furnish the Board with any information as to whether or not the matters therein contained can be substantiated, or true or false?

MR. WATTS: This quotation "got 1/3 of the faculty this year and 1/2 of the remainder next year" was a quotation of a statement that was made to me by Mr. Fabricius on April the 3rd, 1959, when I was in his office conferring with him about an extension of time for summer school. At that time — this statement was made out of the blue and he ended up with

the expression "there's too much deadwood in this system" and it was in reference to the fact that I had — that he stated — Mr. Fabricius stated if he made a hardship exception in my case, he might have to do it with some of the other teachers who were effected by this new school regulation. And I stated that I felt that if they had valid reasons for having an extension of time that no exception should be made in my case. Then he made the statement I just referred to.

MR. WALTON: You are absolutely sure that these words were used by Mr. Fabricius?

MR. WATTS: I am.

MR. WALTON: Was anyone else present?

MR. WATTS: No one was present.

MR. WALTON: What time of day did this take place?

MR. WATTS: About a quarter to five, or four thirty.

MR. WALTON: In Mr. Fabricius' office?

MR. WATTS: Yes.

MR. WALTON: What day of the week — was it a school day?

MR. WATTS: It was a Tuesday or Wednesday I believe.

MR. WALTON: Should Mr. Fabricius take the stand and deny that he made any such statement, can you account for that discrepancy in your testimony and his, in any way?

MR. WATTS: Yes. I rather imagine that he doesn't remember too much of the discussion. I remembered it because it made an impression on me. I was quite shaken by it because I felt he was referring to me possibly, and I still don't know. I assume I was one of them he was referring to.

MR. WALTON: Please state your — is there any information which you can present to the Board in addition to that which has been introduced?

MR. WATTS: On item 5?

[348] MR. WALTON: Yes.

MR. WATTS: Yes. In the matter of — this matter of property owners, I believe there were 20 mem-

bers of the faculty who owned property at that time in the Spring of 1959, and instead of 18 as has been previously stated.

MR. WALTON: Other than paragraph 5, Mr. Watts can you furnish the Board with any information which it has not already received from yourself or other witnesses with respect to whether or not these matters are true or can be substantiated?

MR. WATTS: No, I can't recall now of anything that hasn't already been mentioned by two or maybe more people.

MR. WALTON: And were I to propose to you the same questions with respect to the statements contained in the petition for recall, would your answer be substantially the same as Mr. Swick's?

MR. WATTS: Yes they would.

MR. WALTON: Mr. Watts, do you happen to personally know whether or not any copies of the Open Letter were ever delivered to Mr. Fabricius?

MR. WATTS: Yes, I personally handed him one copy and also to Mr. Frampton the same time.

MR. WALTON: Do you recall what date this was?

MR. WATTS: It was May the 18th.

MR. WALTON: Where was that?

MR. WATTS: It was in the Grade School building in the morning, it was in what is now called or normally the Health Office of the School Nurses Office. At the end of school Mr. Frampton uses it as a room to check over the teacher's report at the end of the year and has a long table there with all of his papers on them. And I stopped in the front of the building I saw Mr. Fabricius car, and that's the reason I knew he was there and I believe Mrs. House was in the Office, I asked her where Mr. Fabricius was, and she said she thought he was down in Mr. Frampton's room, and Mr. Frampton and Mr. Fabricius were there talking business. And I handed one open letter to Mr. Frampton and one to Mr. Fabricius and he tossed it on the table.

MR. WALTON: Who did?

MR. WATTS: Mr. Fabricius tossed his on the table.

MR. WALTON: Do you know what Mr. Frampton did with his?

MR. WATTS: I do not. I rather think he kept it in his hand.

MR. WALTON: Well did Mr. Fabricius look at it?

MR. WATTS: I didn't notice him look at it at the time, no.

[349] MR. WALTON: I see. Did he acknowledge receipt thereof?

MR. WATTS: Not in words to that effect. He just asked me a question and that was all.

MR. WALTON: What was the conversation?

MR. WATTS: The question he asked me was, he said, Watts you've been in this since the beginning, he says what's the cause of all this. And as I went out the door, I answered.

MR. WALTON: What did you say?

MR. WATTS: I said, I think to a large extent, it's a persecution complex. And as I went down the hall, he gave me an answer.

MR. WALTON: And do you recall his answer?

MR. WATTS: I do.

MR. WALTON: Will you tell the Board what his answer was?

MR. WATTS: I prefer not to say because I don't normally use that kind of language, especially in public. It's a word I don't use myself. It's two words.

MR. WALTON: The words of profanity?

MR. WATTS: Well, extreme slang, or profanity, I would call them.

MR. WALTON: Perhaps you could state to the Board what the first letters of the words were?

MR. BURR: Why don't you just come out and say it, I'm sure this is a mature public here. Mr. Watts, you haven't been so reluctant up to this point.

MR. WATTS: I haven't used any profanity, yet, either.

MR. WALTON: Mr. Burr, we will ask the questions at this time, and if Mr. Fabricius wishes to use these words, that's certainly his prerogative.

MR. BURR: I don't think anyone's lacking in intestinal fortitude.

MR. WALTON: I'm going to ask the witness to state what the initials of the words used were?

MR. WATTS: He shouted the word as I went down the hall and it was b.s.

MR. WALTON: Now, this was on May 18th, wasn't it?

MR. WATTS: That is correct.

MR. WALTON: And was school then in session?

MR. WATTS: No, it was three days after school was out.

[350] MR. WALTON: Should Mr. Fabricius take the stand and deny that that expression was used on that occasion in that manner, can you account for such a denial, should one be forthcoming?

MR. WATTS: If such a denial were forthcoming. I doubt if he ever remembers that it was ever said.

MR. WALTON: I believe Mr. Fabricius has already testified, has he not, that he never received a copy of the open letter?

MR. WATTS: I believe he said that I had never given him one, yes. And then later, I believe in his testimony, sometime later, something was said that to his knowledge he didn't remember receiving one.

MR. WALTON: Where had you come from prior to the delivery of the open letter to Mr. Fabricius and Mr. Frampton?

MR. WATTS: Well, I had been in the living room of Mr. Walter Blue's home, stapling these open letters to the School Board together.

MR. WALTON: Do you know whether or not any copies were ever delivered to members of the School Board?

MR. WATTS: Yes. The same morning I delivered copies to several members of the Board.

MR. WALTON: When? With respect to delivery of the same to Mr. Fabricius.

MR. WATTS: Well, it covered a period of about at least an hour because Mr. Jeffrey was aboard the ship, and I missed him the first time I went to the dock, and I went to the Alaska Steamship Office where his office is, they told me he was on the dock, I went

back. I delivered a copy to Mr. Casey and also later I went by and delivered a copy to Mrs. Whitmore and I was there sometime.

MR. WALTON: Now, I'm asking you this question. Do you recall who you delivered the open letter to first?

MR. WATTS: I remember my first objective was to find Mr. Fabricius. And his car was not at the High School.

MR. WALTON: Do you remember who you delivered it to first?

MR. WATTS: I believe I delivered it to Mr. Fabricius and to Mr. Frampton first. I believe that was it.

MR. WALTON: Now, Mr. Watts, I'm going to hand you Board's Exhibit 4. Have you read it?

MR. WATTS: I have.

MR. WALTON: I believe it's supposed to be a signature by the Kirkpatrick Printing Co.

MR. WATTS: Yes.

MR. WALTON: With respect to Mr. Walter Blue. May I ask if the Board has an exhibit signed by Mr. Headrick, Board Exhibit.

[351] MR. CASEY: Board's Exhibit 3.

MR. WALTON: Thank you. I hand you now Board's Exhibit 3. Would you read it to yourself. Is there any statement in Board's Exhibit 3 that you have reason to believe is not correct?

MR. WATTS: I have two.

MR. WALTON: What are they?

MR. WATTS: His personal opinion about whether city equipment should be used for addressing letters for these open letters to the school board, that is a matter of his own opinion and I'm not in judgment on that.

MR. WALTON: Second?

MR. WATTS: Second, I was not at City Hall at any time that morning.

MR. WALTON: The morning of what date?

MR. WATTS: The morning that I was supposed to have been there was May the 18th, 1959 and that letter was dated April 23rd, 1959. Almost two and a

half to 3 weeks before the event was supposed to have occurred.

MR. WALTON: That's very interesting. This letter is written to Dear George, that's Mr. Fabricius?

MR. WATTS: That is correct.

MR. WALTON: Signed apparently by one, Jerry Headrick.

MR. WATTS: Acting City Manager at the time.

MR. WALTON: Mr. Headrick appears to say here "I am positive as to the identity of those members who were in the City Hall the day they were using the machine. They were Walter Blue, Bill Swick and James Watts" end quote. Have you ever been in City Hall on any day with Mr. Blue or with Mr. Swick using the city machine referred to?

MR. WATTS: Are you asking me that question?

MR. WALTON: Yes sir.

MR. WATTS: I have not.

MR. WALTON: Do you believe that Mr. Headrick makes reference to the day of May 18, 1959, because he states that "if I had known the contents of such they sure as word crossed out would never have used city equipment" end quote. Is he referring to the Open Letter?

MR. WATTS: It's the only thing he could have been referring to.

MR. WALTON: Did you, sir, participate directly, or indirectly in the preparation of the open letter?

[352] MR. WATTS: I did.

MR. WALTON: And in connection therewith, did you have occasion to secure the statements of various persons in whole or in part substantiating the contents of the open letter, Exhibit 7?

MR. WATTS: Will you ask that again, please?

MR. WALTON: During the course of the preparation of the open letter, did you or members of your association have occasion to secure statements from people in any way substantiating the contents of the open letter?

MR. WATTS: Do you want me to qualify that statement if I can, or do you want me to say yes or no?

MR. WALTON: Let me mark — may I inquire is it Exhibit 7? May I hand you Appellants Exhibit 22 — let me first hand it to Mr. Burr. Will you please identify Appellants Exhibit 22?

MR. WATTS: This is a statement signed by several teachers in reference to a quotation supposed to have been made — alleged to have been made on January 19, 1959 by Mr. Fabricius at a Grade School Teachers meeting.

MR. WALTON: Who are the teachers who appeared to sign it?

MR. WATTS: William Swick, James Watts, Sue Hollenbeck and Anna Svedlund.

MR. WALTON: Do you know approximately when it was signed.

MR. WATTS: Approximately October, 1959.

MR. WALTON: Were you there when it was signed?

MR. WATTS: Yes.

MR. WALTON: Did you witness all those persons signing it?

MR. WATTS: I did.

MR. WALTON: Mrs. Svedlund?

MR. WATTS: Yes.

MR. WALTON: And Mrs. Hollenbeck?

MR. WATTS: Yes.

MR. WALTON: I would like you to have an opportunity to look at Appellants Exhibit 23, Mr. Burr.

Will you please identify Appellants Exhibit 23?

MR. WATTS: This is a quotation from a short statement alleged to have been made by Mr. Fabricius at the first general Faculty Meeting in 1958.

[353] MR. WALTON: Does it bear any signatures?

MR. WATTS: It's signed by James Watts, William Swick and Anna Svedlund.

MR. WALTON: Do you know when that was signed by those persons approximately?

MR. WATTS: Approximately November, 1959.

MR. WALTON: Do you recall witnessing the signature of Mrs. Anna C. Svedlund?

MR. WATTS: Yes.

MR. WALTON: At the time did you discuss with

her the matter referred to in Appellants Exhibit 23?

MR. WATTS: Yes.

MR. WALTON: Did she approve of the same?

MR. WATTS: She certainly did.

MR. WALTON: No further questions. Excuse me — no further questions.

MR. BURR: Mr. Watts, Exhibit 23 you've just stated was prepared in November, 1959?

MR. WATTS: Correct.

MR. BURR: That's some 5 months after the Exhibit 7 was published in Seward, 5 or 6 months?

MR. WATTS: Exhibit 7 is the Open Letter? Yes.

MR. BURR: What were you trying to do? Justifying the damage that already been done?

MR. WATTS: No, not at all.

MR. BURR: What was the occasion of getting this statement 5 months after you published the letter then?

MR. WATTS: By this time we had discovered that.

MR. BURR: That there was some need to justify a statement before you made it?

MR. WATTS: Well, it's very necessary sometime to protect yourself.

MR. BURR: Oh, I see. You felt there might be some repercussions with the publishing of Exhibit 7?

MR. WATTS: I was quite aware of it.

MR. BURR: Were you aware of it in May of 1959?

MR. WATTS: Not to the extent I was in November or October.

MR. BURR: Exhibit 7 is a statement attributed to Mr. Fabricius on Labor Day in 1958 — Exhibit 23, I'm sorry. Labor Day of 1958. That's [354] commencement of his first year.

MR. WATTS: It wasn't Labor Day — it was the day after Labor Day, whenever he had his Faculty meeting — the first one.

MR. BURR: This says Mr. Fabricius said in his first general faculty meeting on Labor Day, 1958. Did you prepare this statement or didn't you? You signed it.

MR. WATTS: I did.

MR. BURR: Well, what does it say?

MR. WATTS: On Labor Day, 1958 — this was signed probably 14 months afterwards. Some of our faculty meetings had been held on Labor Day, some of them held the first day of school starts, which is the next day following.

MR. FABRICIUS: There was no meeting on Labor Day.

MR. WATTS: Are you sure?

MR. BURR: That's your paper, Mr. Watts.

MR. WATTS: I believe it to be true at the time I typed this up. It's a matter of one day when it occurred.

MR. BURR: One day doesn't make any difference?

MR. WATTS: A year and a half.

MR. BURR: But you did in November of 1958 some 5 or 6 months after Exhibit 7 was published?

MR. WATTS: Approximately, yes.

MR. BURR: Now, what part of Exhibit 7 — I'm at a loss — this statement has to do — appears to be in different — Tell me what part of Exhibit 7 this statement was meant to reenforce?

MR. WATTS: This statement?

MR. BURR: Yes. Exhibit 23 — Appellants exhibit 23.

MR. WALTON: Has the witness so testified, Mr. Burr?

MR. BURR: If he hasn't so testified, then I fail to see the relevance in this.

MR. WALTON: I'll explain it — The relevance is this, this is introduced to corroborate earlier testimony already given by Mr. Blue, to corroborate by Mrs. Svedlund's signature. Just as the Board has endeavored to corroborate certain things by written statements of other persons who are not present. That's the only purpose for which it is introduced.

[355] MR. BURR: Oh, I see. You testified a moment ago that it was you who heard this statement from Mr. Fabricius, about the threat of getting 1/3 of the faculty this year and half of the remainder next year.

MR. WATTS: Yes.

MR. BURR: Nobody was present besides you and Mr. Fabricius?

MR. WATTS: That is correct.

MR. BURR: This was a private conversation?

MR. WATTS: That is correct.

MR. BURR: In his office?

MR. WATTS: Yes.

MR. BURR: No witnesses.

MR. WATTS: To my knowledge, no witnesses.

MR. BURR: Did you make any statement to Mr. Fabricius at that time about your intent to make this statement which you attribute to him a matter of public record by telling the public about it?

MR. WATTS: At that time I did not expect it to be used as a matter of public record.

MR. BURR: You just filed it back in your head and said well, I'll just remember that, maybe it'll come in handy some day?

MR. WATTS: When people speak to me the way Mr. Fabricius did, it makes an impression on me.

MR. BURR: Did you think that he had libeled you or slandered you in any way?

MR. WATTS: To the extent that both of us — that only two of us were in the room, I was not libeled or slandered at that time.

MR. BURR: Well as point of fact, you testified you weren't even sure he was talking about you, didn't you?

MR. WATTS: We were concerned with myself first, then we brought in relatively the other 4 or 5 teachers, who would be effected by this regulation.

MR. BURR: But you stated on direct examination that you were not even sure right now whether that statement was meant to include you or exclude you. Didn't you say that on direct examination? That you didn't know whether you were included in this group or not, even now.

MR. WATTS: No, but I assumed that I must have been.

MR. BURR: But you don't know?

MR. WATTS: But I could easily have been in 1/2 of the remainder that would be here the next year.

MR. BURR: Do you customarily make matters of public records the contents of private conversations of your employers?

MR. WATTS: State that again please?

MR. BURR: Do you consider it an impropriety to publish matters of private conversation between yourself and your employer?

MR. WATTS: In this case the Superintendent and myself are both public employees, and we are responsible to the public.

MR. BURR: You see no impropriety in the publication of the contents of a private conversation between the Superintendent and a school teacher, Mr. Watts, is that right?

MR. WATTS: Under the circumstances arising that spring, I do not.

MR. BURR: You believe Mr. Fabricius to be a liar, Mr. Watts?

MR. WATTS: That is a question that has come up frequently at this hearing.

MR. BURR: It seems to be a matter concerning which we are interested.

MR. WATTS: It should be.

MR. BURR: Do you have an opinion about this matter?

MR. WATTS: Yes. Would you like to state your question so I can answer it in a better and easier manner, please?

MR. BURR: Well, do you have an opinion as to whether or not he tells the truth or doesn't, under oath?

MR. WATTS: Under oath? I believe that Mr. Fabricius believes he is telling the truth when he is under oath.

MR. BURR: Do you believe he is telling the truth? I'm not concerned with what he thinks. Do you think he is?

MR. WALTON: Objection to the form of questioning there.

MR. BURR: When a person doesn't understand my questions, Mr. Walton, I'll attempt to elaborate, but I don't appreciate your telling me what he doesn't understand.

MR. WALTON: I'm sure you don't, but Mr. Casey, I'm going to object to the form of questioning. If this witness is going to be asked has Mr. Fabricius told an untruth, then he should be invited to consider some particular statement. But otherwise what is it that Mr. Burr is referring to? I don't know?

MR. BURR: I haven't heard the witness complain, Mr. Walton.

MR. WALTON: No, but that's what I'm here for — to complain to objectionable questions.

MR. BURR: Then complain. Do you understand my question, Mr. Watts?

MR. WALTON: I'm asking for a ruling, please, Mr. Casey.

[357] MR. CASEY: Objection overruled. Proceed, please.

MR. BURR: Do you understand the question, Mr. Watts?

MR. WATTS: There's been a small lapse of time, will you repeat it, please?

MR. BURR: Well to refresh your recollection, you've heard Mr. Fabricius testify under oath, several times, have you not? On one occasion for some extended period?

MR. WATTS: Yes.

MR. BURR: Do you believe at this time that all or any portion of that testimony was false?

MR. WATTS: To the extent that it does not agree with my belief of what is true about those circumstances

MR. BURR: Can you reconcile those differences?

MR. WATTS: Yes.

MR. BURR: In such a manner that both of you are telling the truth about the same thing?

MR. WATTS: We'll have to come to the question of what we mean by truth. If we want to limit by saying the truth as we know it, as we rationalize the thing to be, then I do believe that, I have no reason to dis-

believe that Mr. Fabricius does not believe what he is telling to be the truth.

MR. BURR: Was it your intention by the publication of Exhibit 7 to cause the removal of Mr. Fabricius?

MR. WATTS: It was not my intention to try to instigate the removal of Mr. Fabricius by the publication of this material. Our only purpose was to, ours and mine, only purpose was to try to reach the School Board, when we had failed on numerous occasions to reach them, to get them to consider the problems that we felt were important to us at this time.

MR. BURR: What did you hope to accomplish by reciting the contents of a private conversation between yourself and Mr. Fabricius to the public of Seward of a very derogatory nature, Mr. Watts? What did you hope to accomplish? Tell me that?

MR. WATTS: Well, to get back to my statement of a few moments ago.

MR. BURR: Just answer my question.

MR. WATTS: This will clarify it. I stated at that time that we are public employees and we are responsible to the public, to the electorate of this town and the School is a very important thing in any community, and it is our responsibilities, both the Superintendents, the faculty, the School Board to face our responsibilities, our problems the best we can for the electorate of the community [358] and when all contacts and —

MR. BURR: Mr. Watts, you still haven't answered my question. Let's get back to it before you forget it again.

MR. WATTS: All right.

MR. BURR: What did you hope to accomplish by publication of the contents of a private conversation to the public of Seward? What did you personally hope to accomplish? Just answer my question, don't give me a recitation, if you can.

MR. WATTS: We wanted the School Board to face our problems.

MR. BURR: Did you want the School Board to admonish Mr. Fabricius to be careful what he said when

he was in his own office in a private conference, is that what you wanted? Did you want the School Board to tell him what he could say in his own office?

MR. WATTS: If it effects the welfare of the school, yes.

MR. BURR: It didn't effect you though, did it?

MR. WATTS: You're referring to item No. 5?

MR. BURR: Yes.

MR. WATTS: It certainly did effect me.

MR. BURR: You know this to be a fact?

MR. WATTS: That it effected me? Yes.

MR. BURR: Sufficiently so, that you thought the whole public of Seward ought to know about the statement that was made in the confines of this man's office? You had in your possession, the statement that could damage a man's character, publish it. For whose reasons - for whose benefits, your own or somebody elses? That's what I want to know. Can you answer that?

MR. WATTS: Yes. It was for the benefit of all the teachers.

MR. BURR: The benefit of all the teachers.

MR. WATTS: I was specifically under no attack on these matters listed here. I had nothing to gain personally from this.

MR. BURR: But you'll concede, will you not, Mr. Watts, that the disclosure of this statement, assuming that it was made, could certainly have no other results but to damage the reputation of the man who was your employer in the sense that he was your superior, in the administrative setup in this school system?

MR. WATTS: The office of Superintendent is a public responsibility and he is responsible for the superintendent and the office is responsible for its actions and conduct to the public at all times.

[359] MR. BURR: Do you think that the Superintendent is responsible for keeping his conference of such a nature that if all of the teachers with whom he confers sees fit to publish this information, that he is able to answer for it.

MR. WATTS: Say that again, please?

MR. BURR: Do you think that a Superintendent

should monitor his conferences with his employees, namely his school teachers, including yourself, to such an extent that he is willing at any point to place that the substance of that conversation in the public forum to Seward and answer to it, in all respects?

MR. WATTS: I think so as far as it's misleading. It's one of his duties and responsibilities of his job.

MR. BURR: And you also think it's a responsibility of a teacher that picks a random statement out of a conference, to publish this, to publish this matter to the electorate of Seward. Moreover you considered it your responsibility.

MR. WATTS: When all other avenues fail, yes. We had made many efforts to keep this thing quiet.

MR. BURR: Were you seeking a retraction of this statement publicly by Mr. Fabricius, if it were made?

MR. WATTS: We wanted the cooperation of the Board to face our problems.

MR. BURR: Were you seeking a retraction of this statement that you have attributed to Mr. Fabricius and that you said you personally overheard?

MR. WATTS: In what relationship do you mean?

MR. BURR: In the relationship that it was said according to you. Did you want the public of Seward to have a public apology for this statement?

Is that what you wanted?

MR. WATTS: No.

MR. BURR: Well, what did you hope to accomplish by reciting this statement to the public?

MR. WATTS: This was a very concrete example of the situation and what we were facing in the matter of turnover in teachers that Spring.

MR. BURR: Could you not have established that without the recitation of such an adverse statement as that?

MR. WATTS: Well, I believe that anyone has the right to use their best arguments in a debate or in any serious problem such as this, and this was very serious to us at that time.

MR. BURR: Do you know the meaning of the word, propriety, Mr. Watts?

MR. WATTS: I believe I do.

MR. BURR: That — that's all I have.

[360] MR. CASEY: Do you want to have a redirect?

MR. WALTON: Do you think, Mr. Watts, that you or any other AFT members of the AFT overstepped bounds of propriety in their authorizing the circulation and distribution of the open letter?

MR. BURR: I object to the question. That's what we're here to determine that's what you object to a minute ago. Let the Board decide it.

MR. WALTON: Very well, I will await a Board ruling.

Mr. Burr, I believe, has just asked a series of questions along this line with respect to this witness.

MRS. SKINNER: Will you repeat the question?

MR. WALTON: Yes, I asked the witness as follows: do you believe that you or the other members of the AFT overstepped the bounds of propriety in authorizing the circulation and distribution of the open letter?

MR. WATTS: I do not.

MR. WALTON: Excuse me — that answer may be stricken from the record, until the Board has ruled.

MR. CASEY: Objection overruled, proceed.

MR. WALTON: Your answer, sir?

MR. WATTS: The same question — I do not.

MR. WALTON: No further questions.

MR. BURR: I would like to ask — I neglected to ask Mr. Watts did you look at Exhibit 10 — Board's Exhibit 10? It's the same one you read last night.

MR. WATTS: I saw it just hastily last night. Yes.

MR. BURR: Have you ever seen that before?

MR. WATTS: Absolutely not.

MR. BURR: You had nothing to do with the preparation of that advertising

MR. WATTS: No, not a bit.

MR. BURR: Do you consider the author of this document to be a friend of the American Federation of Teachers, as it is signed.

MR. WATTS: I rather doubt it.

MR. BURR: You choose to doubt this advertisement as representative of the American Federation of Teachers?

MR. WATTS: It is no document of mine. I know nothing about it.

[361] MR. BURR: I have no other questions.

MR. WALTON: Why do you think if this if it was published, was not published by anyone sympathetic to the interests of the American Federation of Teachers. I invite you to examine it.

MR. WATTS: Well, it's rather sensational, the way it is stated.

MR. WALTON: It is apparent, is it not, that it might be an attempt to mock this proceeding?

MR. WATTS: That's the reaction I got when I first saw it.

MR. WALTON: No further questions.

MR. BURR: Mr. Watts, along that line, you've read it and it makes reference to whether teachers can own property, whether teachers can inform parents and taxpayers, whether teachers can hold public office, and whether teachers are secretly blacklisted. Now as to the property issue, I find that it's somewhat similar to the recitation in Exhibit 7 that you have admitted you helped prepare, paragraph 5.

MR. WATTS: For the record, I never compiled any of this letter, but I'm equally responsible for everything in it and that particular quotation, that first part of item 5 is a quotation that I have given as mine.

MR. BURR: The reference — speaking of the reference to the owning of property, Mr. Watts, there is a statement in Exhibit 7 relative to whether teachers can own property or not, isn't there?

MR. WATTS: Yes.

MR. BURR: And there's a similar statement in Board's Exhibit 20, isn't there?

MR. WATTS: Yes.

MR. BURR: So to that extent there is some similarity between your charges and the charges of a friend of the American Federation of Teachers published in the Anchorage Daily Times on the November 10th.

MR. WATTS: There was a thousand of those printed.

MR. BURR: Of what.

MR. WATTS: The open letter.

MR. BURR: But you have no knowledge of the preparation of that Exhibit 20?

MR. WATTS: No.

MR. BURR: Do you know for a fact that your local had nothing to do with it?

MR. WATTS: As Secretary of the Local I should know, and I'm quite convinced that none of them know a thing about it.

MR. BURR: I have no other questions.

[362] MR. WALTON: No other questions.

MR. WALTON: Mr. Casey, we have no further witnesses at this time.

MR. BURR: I will recall Mr. Fabricius as first rebuttal witness. Will you take the stand, please. I should like to remind you, Mr. Fabricius that you are still under oath as a witness for the Board. I should like to have this exhibit marked as the Board's Exhibit, the next number, whatever it is.

State for the record what that document is?

MR. FABRICIUS: This is a letter given to me by the president of the Seward District Teacher's Association.

MR. BURR: When did you receive that letter?

MR. FABRICIUS: On November 9th — this year

MR. WALTON: What year, sir?

MR. BURR: 1960. You have heard Mr. Blue and Mr. Watts testify about the truthfulness of the allegations in Exhibit 7 — Board's Exhibit 7, Mr. Fabricius and you will recall that on direct examination your testimony was somewhat different from the testimony of Mr. Watts and Mr. Blue?

MR. FABRICIUS: That's right.

MR. BURR: Now, is there any part of your earlier testimony that inview of their testimony, you would like to change or modify in any manner?

MR. FABRICIUS: I haven't said anything that I wish to change or modify, either one.

MR. BURR: Well, do you have any explanation about the apparent inconsistency between the statements that you have made earlier and the statements that both Mr. Blue and Mr. Watts have made?

MR. FABRICIUS: The only inconsistency I can see would be in the matter of intent.

MR. BURR: Have you anything else, Mr. Fabricius, that you feel in the light of the testimony presented by the appellants in this case, that you feel you'd like to correct or to modify in any manner?

MR. FABRICIUS: First of all, I'd like to make a correction on some statements that were entered, I believe in Exhibit here, regarding the first meeting of the Seward teachers in which I am alleged to have made the statement to the effect or something about that I was to be the boss and no teachers could talk to the Board. I think there are plenty of other witnesses here who will testify to the discrepency there.

MR. BURR: Did you make that statement?

MR. FABRICIUS: I did not. And in the meeting which took place in the Elementary School, at which time I read a letter from the Seward School Board [363] more or less directing me to call to their attention certain matters to the attention of the Elementary teachers. I'm quite certain I made no derogatory statements regarding the Seward District Teachers Association at that time and in fact, I rather doubt that I even mentioned it. As for telling teachers that no two teachers could talk in the hall, that's completely false and it would be an idiotic statement to be made by any administrator. The talk of buzz sessions came out, I believe that Mrs. Hollenbeck said I made the remark about buzz sessions. I happen to know that this word buzz sessions was used, but it has never been a statement that I have used, and I think there will be plenty of witnesses to testify to that. There was also the statement attributed to me, something about remembering my enemies. That's another statement that I would call completely erroneous. And as for saying something about meeting the teachers in the corridor after, I certainly can remember nothing of such a statement. I will admit that in my talk at that time I was under a good bit of strain because it was a situation that you don't often get into. But certainly those statements were not made by me.

MR. BURR: You heard one of the witnesses for the appellants testify that there was that was construed to be a rule that teachers had to get leave from the front office to go to the rest room. Did you have

any such regulation as that?

MR. FABRICIUS: I never heard of a more ridiculous statement in my life.

MR. BURR: Well, you heard that testimony?

MR. FABRICIUS: I certainly did.

MR. BURR: Was there any truth in it?

MR. FABRICIUS: Not one iota of truth in it.

MR. WALTON: Objection. Now, Mr. Casey, we wish to formally note that that was not the testimony. The testimony pertained to the effect of a regulation, not that was the regulation. We wish to note our objection.

MR. FABRICIUS: Might I state that our regulations that we have in our school now are almost identical with the regulations in effect at that time and I don't think you will find our teachers here in this building or the other building now, who will say that such regulations have any such effect whatsoever. The regulations put in are for the benefit of children not for the hampering of natural activities of teachers.

MR. BURR: You've heard Mrs. Davis testify — I'm sorry, go ahead.

MR. FABRICIUS: That's enough.

MR. BURR: You've heard Mrs. Davis testify that in effect she was fired for personal reasons. Does that coincide with your recollection of her release?

[364] MR. FABRICIUS: Mrs. Davis, the matter of her release was something that was brought up before the Board. The Board was made aware of the fact that I didn't feel that I could continue with her and some discussion took place about it, and it was decided then that at the end of the school year, we would terminate her and she would receive a month's vacation pay. Mrs. Davis came into my office that evening and subjected me to considerable personal abuse — abusive language as a result of it, and wanting to get a lot of reasons and after being subjected to this abuse, I simply said I'm not going to give you any reasons now. At the next Board meeting, Mrs. Davis appeared before the Board regarding this. And I would say that at that time she was abusive to both me and to the Board regarding her dismissal to come at the end of the term. Following that, she continued

her employment for about 2 days. Well, it was rather, I would say, an unusual situation of having an employee working directly under you to continue in your employment after having gone to you with personal abuse and to the Board, so I simply went in to her and told her one day, I said, well this is a ridiculous situation to continue this way and I'm just closing you out as of now. That's practically the identical words.

MR. BURR: Did you publish this abusive language of Mrs. Davis for the public at Seward?

MR. FABRICIUS: I certainly did not.

MR. BURR: Did you make any attempt to do so?

MR. FABRICIUS: No.

MR. BURR: Do you have any other comments on the statements of the witnesses that you have been presented?

MR. FABRICIUS: Well, I would like to make one statement concerning Mrs. Hollenbeck. That statement to the effect that she was fired for looking out of the window. I had very few contacts with Mrs. Hollenbeck, in fact, the only remark about looking out the window I came down the corridor one day and she was supposed to be on playground duty. The children were outside, but she was doing her playground supervision from the inside looking out, and I did call that to her attention. And as far as the oooh-la-la and all that, that is too silly to even be given consideration.

MR. BURR: Any further comments, Mr. Fabricius?

MR. FABRICIUS: I would like to comment on Mr. Trevethan's testimony. Mr. Trevethan came in on the tail end of a conversation and gave out statements that could only have been of his own imagination. It so happens that I remember very distinctly my conversation with Mr. Kielcheski that night, because they were made under rather unusual circumstances. I was over in the Grade School and I don't recall who informed me that I can't say, the rumor was going around that I had said that the next time Mr. Kielcheski showed up at the Grade School, I was going to throw him out. So that evening, I told my wife, I said, I'm not going along [365] with something like that. So

I went down to see Mr. Kielcheski that evening. And I asked him if he had heard such a rumor, and he said yes, I have. I said, just forget it, if I have something to say to you, I'll come down and say it. It won't have to be by somebody else carrying it to you. And I said, we've had our little differences and that has nothing to do with it, I said, Seward seems to be full of rumors, I said there's rumors all the time. Then we fell into a slight discussion about schools and I did remark about the situation ag Wrengell. Andas a matter of fact, the situation we were discussing happened about 5 years after I left Wrangell, in which I think there was 10 out of 14 teachers, something like that, that issued an ultimatum to the School Board that if they didn't fire the Superintendent, they were going to quit. And the School Board took them up on that and as a result they had quite a hassle and I would say there was probably about 80% of the teachers that were on that list. Now I can't see going into it further, but for the matter of record, if anybody wanted to take the time to find the truth on this, you can go back to Wrangell and check the records and I'll think you'll find in my 15 years as Superintendent in Wrangell I asked for the non-retention of possibly three teachers.

MR. BURR: In 15 years?

MR. FABRICIUS: That's right.

MR. BURR: What were the reasons?

MR. FABRICIUS: One was dismissed for just plain drunkeness.

MR. BURR: What was the reason for the three, if you remember?

MR. FABRICIUS: Well, for incompetence, that's a matter of record.

MR. BURR: That's in 15 years — an average of 1 every 5 years.

MR. FABRICIUS: That's right. We had other teachers that left, but as far as non-retention, no. How Mr. Trevethan could have come up with a statement that I had ever made, to say firing 80% of the teachers in Wrangell, I certainly haven't the slightest idea.

MR. BURR: Have you any further comments about this conversation?

MR. FABRICIUS: That, to the best of my knowledge, was the tone of the conversation.

MR. BURR: Have you any further comments about the statements of any other witnesses presented by the respondents, either a clarification or a denial?

MR. FABRICIUS: Well as far as you might say, arbitrary firing, of Mr. Condor. Certainly Mr. Condor was not fired, he presented a resignation. He did not want to abide by regulations made and approved by the Seward School Board.

[366] MR. BURR: Regulations pertaining to what?

MR. FABRICIUS: Generally to the working day for one thing.

MR. BURR: Such as?

MR. FABRICIUS: The time to get there in the morning and the time to leave in the evening.

MR. BURR: What time did he customarily get to school in the morning?

MR. FABRICIUS: Well, if he was going to ride the bus which he insisted on doing, he could not get there by the time he was supposed to be on duty. And if he was going to ride in the evening he would have to leave earlier than was provided by in the regulations.

MR. BURR: Did you so advise Mr. Condor?

MR. FABRICIUS: I certainly did.

MR. BURR: Did he expect some special dispensation to ride the school bus?

MR. FABRICIUS: He apparently did, because he made the remark that, well I don't have a car. And I said, well your wife has one, and his remark to that was, yes, she works in the AGS and she has to get there on time. And I remarked to him then, why don't you buy a car? He said, I don't have the money. I said, well, you can move to town. Well, I can't do that either, I've got cheap rent out here. I said, frankly, your financial condition and your family situation is no problem of mine. That's something you have to work out for yourself.

MR. BURR: Both he and his wife were employed at that time?

MR. FABRICIUS: Yes.

MR. BURR: Did this have any bearing on his forced resignation, as has been described?

MR. FABRICIUS: I wouldn't say that it was a forced resignation at all. It was perfectly voluntary.

MR. BURR: Did you ask him for a resignation?

MR. FABRICIUS: I certainly did not.

MR. BURR: Did he tender it to you voluntarily?

MR. FABRICIUS: He did.

MR. BURR: Have you any other comments on the statements of Mr. Blue or Mr. Watts?

MR. FABRICIUS: There have been so many statements made I could hardly recall which one you're referring to.

[367] MR. BURR: I don't have any notes in particular here. You have heard their comments on the items 1 through 10 in Exhibit 7?

MR. FABRICIUS: Yes.

MR. BURR: Do you wish to reaffirm or qualify your earlier testimony in that regards?

MR. FABRICIUS: I believe my earlier testimony was just as I still feel about it.

MR. BURR: I have no other questions.

MR. WALTON: You're quite sure, are you Mr. Fabricius, in your first meeting with the Faculty in 1959 that you did not state in words to the following effect, I'm boss and no one can talk to the Board directly?

MR. FABRICIUS: I'm quite certain of that, sir.

MR. WALTON: Is it possible you might have said that?

MR. FABRICIUS: Why do you say, is it possible, I said I was quite certain I didn't make the statement.

MR. WALTON: Is it possible?

MR. FABRICIUS: And I believe there are witnesses here who will testify to that effect.

MR. WALTON: Who?

MR. FABRICIUS: There are a number here who are willing to testify to that.

MR. WALTON: I see. Is it possible you did say that?

MR. BURR: I'll object to the harrassing tactics. The man has answered the question. He said he doesn't believe that he said it.

MR. WALTON: Mr. Casey, I think the Board will agree that this is the kind of question Mr. Burr has asked repeatedly. I haven't objected to harrassing. I don't think this is harrassing. I'm interested in asking this question and I would like to have a ruling.

MR. CASEY: Objection overruled. Proceed, please.

MR. WALTON: Is it possible that you might be mistaken, Mr. Fabricius?

MR. FABRICIUS: Well, anyone can be mistaken, but I don't believe that as a superintendent that I would ever make such a statement.

MR. WALTON: Why?

MR. FABRICIUS: Because it just isn't one that you would make, that's all.

MR. WALTON: The Superintendent wouldn't tell a teacher that they shouldn't go and talk to the Board directly?

MR. FABRICIUS: I don't believe that the statement was made quite in that way. You said that you can't.

[368] MR. WALTON: Yes, the Superintendent wouldn't tell the teachers they can't talk to the Board directly?

MR. FABRICIUS: That's right. I don't think they would because it isn't a matter of talking to the Board directly.

MR. WALTON: Superintendents wouldn't tell the teachers that they can't take their complaints directly to the Board?

MR. FABRICIUS: Our Board policy clarifies that. All they have to do is — I don't think a superintendent would tell them that, no.

MR. WALTON: But you'd put it on paper, wouldn't you? You wouldn't tell them, but you'd write it down, is that it?

MR. FABRICIUS: I say that that is fully explained

in the book of policies. And that it's the responsibility of the teachers to be acquainted with that.

MR. WALTON; Because you wrote it?

MR. FABRICIUS: Because I compiled it and it was approved by the School Board.

MR. WALTON: Were you there when it was approved?

MR. FABRICIUS: I definitely was.

MR. WALTON: Oh really, when was that?

MR. FABRICIUS: Different parts of it were approved at different times.

MR. WALTON: Oh, that's right, we went through that. And you stated there were certain parts you couldn't remember whether or not they were approved, didn't you so testify?

MR. FABRICIUS: It would be a little difficult to remember each time each time any part was approved, yes.

MR. WALTON: And with respect to the January 1959 faculty meeting, Mrs. Hollenbeck attributed to you certain statements such as "remembering my enemies" and I believe you testified today that you were under a good bit of strain and that you were in a situation that you should not get into. What was the situation that you should not have gotten into, sir?

MR. FABRICIUS: I don't recall that I made the statement that I was in a situation which I should not get into.

MR. WALTON: I don't mean to mislead you. I thought you so testified.

MR. FABRICIUS: No, I don't believe I did.

MR. WALTON: Were you in a situation that you shouldn't have gotten into?

MR. FABRICIUS: No, I don't think I was.

[369] MR. WALTON: You don't think a teacher should be in a position — shouldn't be in a position where you have to criticize — I'll withdraw that question.

RECORDER: All of it?

MR. WALTON: All of it. You state that you were under a good bit of strain during that address to the faculty. What was the reason for that, sir?

MR. FABRICIUS: Well, after all, when you go before a faculty at instructions of the Board with what would be somewhat of a reprimand to certain ones in there, and the fact that I was not too well acquainted with them, would be a strain, yes.

MR. WALTON: And it was painful for you to do that, was it?

MR. FABRICIUS: Well, it wasn't pleasant.

MR. WALTON: It was unpleasant?

MR. FABRICIUS: I said it wasn't pleasant.

MR. WALTON: Couldn't it better to say it was unpleasant?

MR. FABRICIUS: I believe you're bandying words, now.

MR. WALTON: No, I was just asking a question, Mr. Fabricius, perhaps you can answer it, was it unpleasant?

MR. FABRICIUS: In a sense yes.

MR. WALTON: And, you were only carrying out the instructions of the Board, weren't you?

MR. FABRICIUS: Well, I was in accord with it or I would have objected to.

MR. WALTON: Certainly, in fact, you even wrote the letter to yourself.

MR. FABRICIUS: No, you are mistaken. I did not.

MR. WALTON: Well, who did?

MR. FABRICIUS: One of the Board members wrote it and I did hear the testimony where it felt that I had had a hand in it, but it just so happens, that I didn't have.

MR. WALTON: I see. Who wrote it?

MR. FABRICIUS: I think Mr. Jeffrey compiled most of it.

MR. WALTON: Mr. Jeffery is the only ex-Board member who is not in Alaska, today, isn't he?

MR. FABRICIUS: I believe so.

MR. WALTON: Why do you think he wrote it?

[370] MR. FABRICIUS: Well, his wife happened to be secretary of it. And frankly I don't see that who wrote it has much to do with it inasmuch as it was approved by the Board.

MR. WALTON: Is that so. Who — why do you think Mr. Jeffrey wrote it?

MR. FABRICIUS: I just got through saying that his wife was secretary at the time and it would have been easy for him to compile and bring it for approval to the Board.

MR. WALTON: You don't as a matter of fact know whether he did, or didn't, do you?

MR. FABRICIUS: No, of course I don't, as a matter of fact. I was not present when it was written and not having been present, I couldn't definitely say, could I?

MR. WALTON: Did you ever ask any of the present board members who wrote it?

MR. FABRICIUS: Maybe the secretary wrote it.

MR. WALTON: Did the secretary commonly write such a policy matter for the Board?

MR. FABRICIUS: As long as the Board approved, it wouldn't make much difference who wrote it.

MR. WALTON: When did the Board approve that letter?

MR. FABRICIUS: Don't try to tie me up on the date of that nebulous because I couldn't give it to you.

MR. WALTON: Were you there when they approved it?

MR. FABRICIUS: Yes.

MR. WALTON: It was typed out, and they read it and they approved it?

MR. FABRICIUS: I believe so.

MR. WALTON: Well, were you there or weren't you?

MR. FABRICIUS: I just got through saying I was, Mr. Walton.

MR. WALTON: I thought you said, I believe so. There's no doubt in your mind that you were there when the letter was approved by the Board?

MR. FABRICIUS: That's correct. Inasmuch as I have attended every Board Meeting that has taken place since I've been in Seward.

MR. WALTON: And you specifically remember that particular board meeting, don't you?

MR. FABRICIUS: As far as this letter is concerned, yes. I haven't rehearsed this as much as the appellants, it's very difficult for me

MR. WALTON: Go ahead — I want to hear the rest of that. What was it that you started to say?

[371] MR. BURR: You asked for it.

MR. FABRICIUS: I'd rather not say it.

MR. WALTON: Before Mr. Burr cautioned you to stop talking, what was it that you were going to continue to say.

MR. FABRICIUS: I presume you would like to know, but I don't intend to tell you.

MR. WALTON: You decline to answer, is that it? Do you think that you as a school superintendent is less likely have to respond to questions than other witnesses?

MR. FABRICIUS: My thoughts are my own.

MR. WALTON: But other witnesses are not, is that that it?

Mr. Fabricius, I'm testing your recollections. Course, you remember the Board Meeting in which the letter was approved, don't you?

MR. FABRICIUS: I didn't state that I remembered very clearly, I stated that I remembered it was brought up to the Board and approved, yes.

MR. WALTON: The letter itself, after being typed out, was approved by the Board? Right?

MR. FABRICIUS: Right.

MR. WALTON: And it was later handed to you, was it?

MR. FABRICIUS: I believe so.

MR. WALTON: How many days was it handed to you? Or was it handed to you on the same day it was approved by the Board?

MR. FABRICIUS: I don't recall.

MR. WALTON: Did you ever get the letter?

MR. FABRICIUS: Presumably I did if I took it down and read it to the Faculty, yes.

MR. WALTON: Do you recall that the regular meeting of the School Board was held on January 13, 1959?

MR. FABRICIUS: I wouldn't recall each individual meeting, no.

MR. WALTON: If I were to hand you appellants Exhibit 7, purporting to be minutes of the Seward School Board for the regular meeting, Jan. 13, 1959, which in fact were produced by yourself, would you have any reason to believe that they were not correct?

MR. FABRICIUS: No, I wouldn't have any reason to believe that.

MR. WALTON: I believe it was at that meeting, was it not, that the following took place and I quote from the minutes "Mr. Casey and Mr. Fabricius said a great deal of trouble is being caused by gossip in the Grade School. Mrs. Svedlund, Mrs. Hollenbeck, Mr. Richardson and Mrs. [372] Copeland are the worst trouble makers — deletion, Mr. Fabricius says that possibly a special meeting should be held in order to pass on to the teachers. The Board asked Mr. Fabricius to see these teachers and bring up the matter of professional ethics. It was a result of this meeting, was it not, that you had this January 1959 meeting?

MR. FABRICIUS: It's very possible, I couldn't say.

MR. WALTON: As a matter of fact, the letter itself bears the date January 16, 1959, does it not?

MR. FABRICIUS: That's what's there.

MR. WALTON: Can you tell me after the January 13th meeting, when was it that the Board met to see the letter that was typed on January 16th?

MR. FABRICIUS: I can tell you nothing more than you have right there.

MR. WALTON: I believe that your testimony has been introduced, has it not, that the meeting in which you appeared and discussed professional ethics, was on or about January 18, 1959? Does that jibe with your recollection?

MR. FABRICIUS: I don't recall the date, at all.

MR. WALTON: If I were to tell you that it was on or about January 18, 1959, would you have any reason to dispute it?

MR. FABRICIUS: I wouldn't dispute it as I just got through saying I don't recall the date.

MR. WALTON: And you wouldn't be able to explain, would you, when the regular Board Meeting was between January 13 and January 18th in which this letter was supposedly approved by the Board?

MR. FABRICIUS: I can't give you any more information than is in the minutes.

MR. WALTON: It's possible that your recollection is not correct, on that point, isn't it?

MR. FABRICIUS: My recollection? Well, sir, I can give you only what is there in the minutes.

MR. WALTON: You don't remember independently of the other minutes, is that right?

MR. FABRICIUS: Remembering what is in all the minutes at various meetings, would be impossible.

MR. WALTON: Then you really don't remember the letter being approved at a Board Meeting, is that it?

MR. FABRICIUS: No, I didn't say that. I remembered a discussion of the letter, certainly.

[373] MR. WALTON: Before it was written?

MR. FABRICIUS: Discussion of the necessity, I believe, yes; and as far as the letter, I feel quite certain that the letter was brought before the Board and was approved is enough to satisfy. I believe the president of the Board's signature and the secretary.

MR. WALTON: How often were Board Meetings held at that time of year, do you know?

MR. FABRICIUS: Generally, Board Meetings are once a month. There have been other extra meetings, how many, it would be impossible for me to state.

MR. WALTON: Mr. Fabricius, do you know whether any efforts had been made by yourself or the Board to revoke the teachers certificates of these appellants?

MR. FABRICIUS: To my knowledge, no efforts have been made.

MR. WALTON: Do you know whether or not any correspondence has been directed to any public official in Juneau with respect to the possible revocation of these teachers certificates.

MR. FABRICIUS: I believe at one time I did write to Mr. Matthews in that vein.

MR. WALTON: When was that sir?

MR. FABRICIUS: He gave me an off the cuff statement, not an official statement.

MR. WALTON: You did write to Mr. Matthews, didn't you?

MR. FABRICIUS: That's right.

MR. WALTON: And concerning the revocation of teachers certificates?

MR. FABRICIUS: That's right.

MR. WALTON: Of what person?

MR. FABRICIUS: I don't recall if I even mentioned names. I gave a matter of situations.

MR. WALTON: Do you have a copy of that letter?

MR. FABRICIUS: Pardon?

MR. WALTON: Do you have a copy of that letter?

MR. FABRICIUS: I don't believe I do.

MR. WALTON: That's one of the letters to which you didn't keep a copy?

MR. FABRICIUS: There are many letters that I don't keep a copy of.

MR. WALTON: Which letters in your official capacity did you keep a copy of?

[374] MR. FABRICIUS: This was not in an official capacity. This was written to Mr. Matthews, a personal letter and I received a reply that was in a personal vein. It was not a matter of official, it was a personal communication. Not a matter of Board record or anything else.

MR. WALTON: Do you have that letter?

MR. FABRICIUS: I don't believe I do, no. I would see no point in keepingit.

MR. WALTON: You state that rumors were going around that you threatened to throw Mr. Kielcheski out?

MR. FABRICIUS: That had been a rumor that was brought to me, yes.

MR. WALTON: Who brought you that rumor?

MR. FABRICIUS: I don't recall now.

MR. WALTON: Who do you think spread that sort of rumor?

MR. FABRICIUS: I haven't any idea.

MR. WALTON: Are you sure that someone did.

MR. FABRICIUS: Well, if it was brought to me, someone must have and Mr. Kielcheski had heard the rumor, certainly there must have been a rumor to that effect.

MR. WALTON: Is this the same sort of rumor that led you on January 13, 1959 to tell the Board that teachers Svedlund, Hollenbeck, Richardson and Copeland were the worst troublemakers?

MR. FABRICIUS: I think I testified earlier that we found we were in error in accusing certain of these members of being responsible. I believe the record will bear that out.

MR. WALTON: It was primary on the basis of that rumor, that you addressed the teachers in 1959, January, wasn't it?

MR. FABRICIUS: At the request of the Board.

MR. WALTON: Mr. Trevethan occupies a position of respect in the community, does he not?

MR. FABRICIUS: I might question that.

MR. WALTON: Pardon me?

MR. FABRICIUS: Some might question that.

MR. WALTON: Oh really? Do you question it?

MR. FABRICIUS: That's personal opinion.

MR. WALTON: Well, I want your personal opinion.

[375] Please give it to us.

MR. FABRICIUS: I question his ability at least in his present public position, let's put it that way.

MR. WALTON: What is his present public position?

MR. FABRICIUS: City Councilman.

MR. WALTON: You don't think he's a good city councilman, is that it?

MR. FABRICIUS: That's my right to feel that way.

MR. WALTON: That's the way you feel?

MR. FABRICIUS: That's right.

MR. WALTON: How long have you known Mr. Trevethan?

MR. FABRICIUS: I really truly don't. I'm not personally acquainted with the man at all.

MR. WALTON: Is your acquaintance with him in exercise of his duties as city councilman?

MR. FABRICIUS: I attended one city council meeting at which Mr. Trevethan sat, and I'm perfectly willing to stand on my judgment as a result of that one meeting.

MR. WALTON: It doesn't take long to size up a man, does it?

MR. FABRICIUS: That's your opinion, not mine.

MR. WALTON: I'm asking you, do you share that opinion?

MR. FABRICIUS: In some cases.

MR. WALTON: In his case, yes.

MR. FABRICIUS: If you want to put it that way.

MR. WALTON: Do you put it that way?

MR. FABRICIUS: I didn't, no.

MR. WALTON: Well, did you size him up in that one meeting?

MR. FABRICIUS: As his actions as a public official, let's just say I did and save argument — let's get this thing on the road.

MR. WALTON: No, I'd rather have you tell the truth, rather than trying to please me.

MR. FABRICIUS: I'm not trying to evade you as far as the truth. I gave you my opinion and if I want to say I size him up as a result of one meeting, take it that way, it's fine with me.

[376] MR. WALTON: Now about your opinion as to his veracity?

MR. FABRICIUS: I knew nothing about his veracity.

MR. WALTON: You don't have an opinion as to whether or not he tells the truth, or not, do you?

MR. FABRICIUS: I know nothing about his veracity.

MR. WALTON: Do you have an opinion about it?

MR. FABRICIUS: We all have opinions of probably everyone.

MR. WALTON: Do you have an opinion about him? His veracity?

MR. FABRICIUS: Not especially, no.

MR. WALTON: You have heard his testimony here, have you not, with respect to your conversation?

MR. FABRICIUS: And I would say that he's using a good bit of imagination.

MR. WALTON: Oh, it varies substantially from your recollection, does it not?

MR. FABRICIUS: Pardon?

MR. WALTON: His account varies substantially from yours, does it not?

MR. FABRICIUS: It certainly does.

MR. WALTON: And you think that his is imaginative?

MR. FABRICIUS: I'd rather say that than call a man a liar.

MR. WALTON: You don't think he was lying, do you?

MR. FABRICIUS: I think he has imagined that he heard things, let's put it that way.

MR. WALTON: Why do you think so?

MR. FABRICIUS: Because I remember my statements quite clearly and in that connection

MR. WALTON: Did you ever imagine that you heard things — rumors about people trying to get you perhaps?

MR. FABRICIUS: I don't believe so.

MR. WALTON: Do you think that Mr. Watts imagined his conversation wherein you gave out a threat to get 1/3 and get the 1/2 next year?

MR. FABRICIUS: I stated previously that I don't believe I ever made such a statement to Mr. Watts.

MR. WALTON: Do you think that Mr. Watts is just telling a deliberate lie or do you think he imagined it?

MR. FABRICIUS: I think Mr. Watts was telling a deliberate lie.

[377] MR. WALTON: Mrs. Hollenbeck who testified to things you allegedly said in the January 59 faculty meeting, do you think she's imagining it or telling a deliberate lie?

MR. FABRICIUS: I think Mrs. Hollenbeck has

been using her imagination for a considerable extent.

MR. WALTON: You don't think she's lying, do you?

MR. FABRICIUS: I think it's a matter of intent.

MR. WALTON: Do you think she was lying, sir?

MR. FABRICIUS: Well, if you want to put it that way, I guess we will have to say that she was lying, too.

MR. WALTON: I believe my last question before the tape ran out was do you think Mrs. Hollenbeck was lying in her testimony? What was your answer, sir?

MR. FABRICIUS: It certainly didn't agree with the facts as I know them.

MR. WALTON: Do you think she was lying?

MR. FABRICIUS: Maybe she thought she was telling the truth, I don't know.

MR. WALTON: Do you think she was deliberately lying? Didn't you just say yes when this tape had run out?

MR. FABRICIUS: All right, let's just put it yes, then.

MR. WALTON: Do you think she was lying?

MR. FABRICIUS: Inasmuch as it doesn't agree with what I know to be the truth, I would have to say she was lying.

MR. WALTON: Perhaps she was using her imagination there.

MR. FABRICIUS: Maybe she was.

MR. WALTON: Which do you think was the case?

MR. FABRICIUS: Well, I would prefer to say that I think she was using her imagination in kindness to the woman herself.

MR. WALTON: But you wouldn't want to extend that kindness to Mr. Watts?

MR. FABRICIUS: No.

MR. WALTON: Why?

MR. FABRICIUS: Because I feel differently about Mr. Watts.

MR. WALTON: How do you feel about him? As a matter of fact you're pretty bitter against Mr. Watts, aren't you?

[378] MR. FABRICIUS: Bitter? No, I wouldn't call it bitter.

MR. WALTON: What would you call it? How would you describe your feelings towards Mr. Watts?

MR. FABRICIUS: Mr. Watts doesn't figure very big in my estimation, if you want my opinion.

MR. WALTON: What do you feel, if you say you would extend to Mrs. Hollenbeck and Mr. Trevethan the courtesy of imagination but to Mr. Watts, you extend only the quality of being a liar. And you say you do this because of your feelings for Mr. Watts. What are your feelings toward him?

MR. FABRICIUS: We have to keep this in the bounds of propriety, I suppose, well, I will just have to say that I feel that Mr. Watts was more or less vindicative in his attitude, he was trying to, deliberately trying to injure me.

MR. WALTON: Why would he deliberately try to injure you?

MR. FABRICIUS: That would be a matter of conjecture on my part.

MR. WALTON: Well, have you conjectured on that point?

MR. FABRICIUS: Not to the point of giving any testimony on it, no.

MR. WALTON: You don't have any opinion then that he is trying to injure you, do you?

MR. FABRICIUS: Yes, I do.

MR. WALTON: Do you have an opinion as to why he would try to injure you?

MR. FABRICIUS: First of all, when regular regulations didn't go along with what Mr. Watts wanted, he tried to get special dispensation, he didn't get it, and I feel that was the start of it.

MR. WALTON: What was the special dispensation that he sought to get which he didn't get?

Meeting adjourned at 5:10 pm until 7:30 that evening.

Meeting reconvened at 7:35 pm.

MR. WALTON: I believe my last question, Mr. Fabricius, was what was the special dispensation that Mr. Watts requested that he didn't get?

MR. FABRICIUS: Well that was regarding the training summers for continuing teachers.

MR. WALTON: Can you explain that for us?

MR. FABRICIUS: Well, they were required to get so many hours between a certain period of time, and it would require Mr. Watts to attend school the following summer.

MR. WALTON: He was required by regulation, was he, to attend school in the summer of 1959?

[379] MR. FABRICIUS: I believe it was '59 or 60, 59.

MR. WALTON: And when you say that he made a request that he be permitted to delay the taking of this education until the following summer?

MR. FABRICIUS: I don't recall if it was stated when, but he did request that he be permitted to, in other words, that he not be required to attend the following summer — that summer, yes.

MR. WALTON: And you say that this request was denied?

MR. FABRICIUS: Well, it was not simply a matter of denial, it was a matter of policy set up, requiring that and I couldn't go beyond that for one if I didn't for all and that was the statement I made to him.

MR. WALTON: Now, Mr. Fabricius, if I understand you correctly, this was the reason you say he was vindictive?

MR. FABRICIUS: No, I don't believe I said that.

MR. WALTON: I asked you before why did you think Mr. Watts was vindictive? What was your answer, sir?

MR. FABRICIUS: At the moment I just don't recall.

MR. WALTON: Then tell us today, now, why do you think Mr. Watts was vindictive to you?

MR. FABRICIUS: Well, all the way through, on this, that was possibly the start of it, and the feeling that regulations were going to be much that he didn't want to abide by them.

MR. WALTON: And any other reasons why you think Mr. Watts was vindictive towards you, sir?

MR. FABRICIUS: Other than regulations, I can't say that there were. The regulations that he felt that regulations that were mine and that any regulations that effected him were the result of my thinking.

MR. WALTON: And you think it was because of this that he became vindictive, and because he became vindictive he was lying about you? Is that correct, sir?

MR. FABRICIUS: No, I didn't say that.

MR. WALTON: I thought you said you thought that Mr. Watts had uttered falsehoods about you and I asked you why and you said because he was vindictive, I thought. Isn't that what you testified, sir?

MR. FABRICIUS: I don't recall my exact words, no.

MR. WALTON: Well, is that approximately what you said?

MR. FABRICIUS: I felt that his falsehood that he felt they would gain an advantage to him in some way, yes.

MR. WALTON: What sort of advantage did you think, sir, that he would gain by telling lies?

[380] MR. FABRICIUS: I felt and I still feel that he felt by falsehoods distributed about the community, divides people. He could in a sense undermine my standing with the Board and possibly eventually secure my removal.

MR. WALTON: And you attributed this intent to Mr. Watts, is that correct?

MR. FABRICIUS: Mr. Watts is one, yes.

MR. WALTON: And do you feel that is why — do you believe that Mr. Watts lied during this proceeding, sir?

MR. FABRICIUS: Well, the one statement he gave here, that's one I definitely think that he lied, yes.

MR. WALTON: The one about your alleged statement you said you would get 1/3 and get rid of half of the remainder next year?

MR. FABRICIUS: That's right. He didn't allege, he made the statement as a quote.

MR. WALTON: I see. You have also heard the testimony have you not that this open letter was pub-

lished and circulated after the result of joint action by a group of teachers known as AFT, consisting of not less than 18 members? Have you heard such testimony?

MR. FABRICIUS: Yes.

MR. WALTON: You have heard that 18 teachers in your school system concurred in the decision to publish and circulate that letter, have you not?

MR. FABRICIUS: I have heard it stated, but it is my own feeling that it was not 18 teachers that actually had their heart and soul in it at all, I feel that they were being led by others into such an action, and that acutally the most of them had very little to say about it.

MR. WALTON: Even though they voted for it?

MR. FABRICIUS: That's right.

MR. WALTON: They voted for it, but they didn't really believe it?

MR. FABRICIUS: I think if you notice some of it was by proxy votes.

MR. WALTON: Mr. Fabricius, do you mean to tell me that 12 people left the SDTA on April 8, 1959, to form another union for the express purpose of being able to pursue the action which SDTA didn't want to do, that those 12 people voted for this sort of thing, and you say their heart wasn't it it?

MR. FABRICIUS: Voted for which — what are you referring to?

MR. WALTON: The circulation of the open letter.

MR. FABRICIUS: I don't think some of their hearts was in it, no.

[381] MR. WALTON: Why do you think they did it, Mr. Fabricius?

MR. FABRICIUS: Because I think they were encouraged to do it.

MR. WALTON: Do you have any evidence to that effect, sir, that people were misled by one or two people.

MR. FABRICIUS: I think we may have some testimony that will come out to that effect, yes.

MR. WALTON: Do you know of any such things?

MR. FABRICIUS: Do you mean do I have written proof?

MR. WALTON: Any kind of knowledge, Mr. Fabricius, that 18 people were horn-swoggled by these 2 appellants.

MR. FABRICIUS: Well, I would think the fact that some of them later withdrew from this union, would indicate that they certainly did not have their hearts and souls in it, yes.

MR. WALTON: It would certainly indicate it later on, wouldn't it, after you talked to them.

MR. FABRICIUS: I haven't talked to them.

MR. WALTON: You talked with Mr. Monty Richardson, didn't you, shortly after he was appointed to the Grievance Committee?

MR. FABRICIUS: I never did discuss with Monty Richardson his affiliation with the AF of T, no.

MR. WALTON: As a matter of fact, the special dispensation Mr. Watts requested, was in fact, granted to him on May 8, 1959, was it not?

MR. FABRICIUS: If that's the date the Board took action on it, that would be the date.

MR. WALTON: Then that really doesn't explain for his circulation of the letter, does it? Before you stated you thought he had lied about you, you thought he circulated the letter because he requested something he hadn't gotten. But he did get it on May 8th, didn't he?

MR. FABRICIUS: Yes, but it certainly wasn't on my request that he got it.

MR. WALTON: No, but he did receive the very thing that he wanted.

MR. FABRICIUS: That's right, he did. Not only he, but all the rest of them, don't forget that.

MR. WALTON: Exactly, he was representing a large group of teachers, wasn't he, in his request?

MR. FABRICIUS: I don't know that he was, no.

MR. WALTON: But all the teachers enjoyed the benefits of the acquiescence of it?

[382] MR. FABRICIUS: That doesn't necessarily mean that he was representing them, no, because I

think a number of the others would have been willing to go to school, they didn't ask for any special dispensation.

MR. WALTON: And, if that wasn't the reason for the alleged lies of Mr. Watts', what do you suppose the reason was?

MR. FABRICIUS: He probably has his own reasons. I wouldn't necessarily know all his reasons.

MR. WALTON: Then, why do you think, sir, that Mr. Watts lied and Mrs. Hollenbeck just used her imagination and Mr. Trevethan?

MR. FABRICIUS: I would say that Mrs. Hollenbeck is much more flighty in her imagination than Mr. Watts.

MR. WALTON: Would you say that of Mr. Trevethan.

MR. FABRICIUS: I wasn't discussing Mr. Trevethan.

MR. WALTON: I'll ask you then about Mr. Trevethan, do you think he's flighty?

MR. FABRICIUS: I think he's built up a story out of very little.

MR. WALTON: Do you believe sir, that teachers should not engage in political activities?

MR. FABRICIUS: I don't say that they shouldn't engage in political activities.

MR. WALTON: Do you feel that they shouldn't critize the Board which employs them?

MR. FABRICIUS: I feel that they should first come to a Board with things they grieve over, and I don't think it's a good thing for teachers to go out publicly and criticize their employing group without first making a very, very sincere effort to work out the problems.

MR. WALTON: You don't think a teacher has a right to do this even after the school year ends, do you?

MR. FABRICIUS: No, I don't.

MR. WALTON: You don't think an ex-teacher has this right, do you?

MR. FABRICIUS: I didn't say an ex-teacher.

MR. WALTON: Well, I'm talking about a teacher after his contract ends. After the 180 day period of his contract.

MR. FABRICIUS: I think that their actions are — that they're to be held accountable for their actions during the summer just as much as any other time.

MR. WALTON: Even after their teaching contract has expired?

MR. FABRICIUS: If they intend to teach the next year, yes.

MR. WALTON: If they don't intend to teach the next year, then it's permissible, is that it?

[383] MR. FABRICIUS: Then they have no liability as far as their present employing group.

MR. WALTON: Are you saying sir that these appellants were guilty of improper conduct during the summer of 1959, their very guilt depends wholly on whether or not they intended to teach the following year?

MR. FABRICIUS: Well, they are trying to claim continuing contract, are they not?

MR. WALTON: I'm asking you the question.

MR. FABRICIUS: Well, if they are claiming continuing contracts, then I certainly think they are responsible.

MR. WALTON: Would you try and answer this question. In the summer of 1959 if these appellants did not intend to come back to school the following school year, then I take it their actions were not reprehensible.

MR. BURR: I object to this question. It calls for a legal conclusion that this witness is not qualified to answer. That's a legal question — a technical question which I should like to have this Board resolve, therefore it's an improper question for the witness.

MR. WALTON: Mr. Casey, perhaps Mr. Burr may be requested to state just what the legal question is, I don't see it.

MR. BURR: The legal question is as to the liabilities after the alleged contracts came to an end, whether or not they are under the same obligation

as they were prior to the termination of the school year. I submit it has to do with the Teacher Tenure Law and the interpretation of the contracts under the law.

MR. WALTON: But, Mr. Casey, I'm not asking about the legal applications, I'm asking Mr. Fabricius whether or not he feels these parties would be reprehensible if they so acted without the intentions of coming back to teach.

MR. BURR: I'll object to the question it calls for a conclusion — it's beyond the scope which the witness has to answer.

MR. CASEY: Objection sustained. Proceed please.

MR. WALTON: Mr. Fabricius, apparently you did not feel that the Superintendent — apparently you do not feel that a Superintendent should not criticize ex-teachers publicly, do you?

MR. FABRICIUS: Criticize ex-teachers?

MR. WALTON: Publicly.

MR. FABRICIUS: No, I would — I probably have criticized ex-teacher, if you want to say ex-teacher publicly.

MR. WALTON: Do you feel that this is within your right as Superintendent?

MR. FABRICIUS: Not as a superintendent.

MR. WALTON: As a citizen?

[384] MR. FABRICIUS: All right, as a citizen.

MR. WALTON: As a matter of fact, you have recently, did you not, on Oct. 31st, about 8:45 PM, publicly uttered critical statements about these appellants — excuse me October 3rd, 1960.

MR. BURR: I'll object to anything that happened in 1960 — we're speaking of events that happened in 1959.

MR. WALTON: Mr. Casey, we're speaking here of what the basis for political rights of teachers, whether or not their conduct is subject to censure by a school board. Certainly we are entitled to know what the superintendent of public schools opinion is on this subject, he is the very one who recommends their non-retention to the Board, publicizing critical remarks. This is the issue.

MR. FABRICIUS: What was your question now?

MR. WALTON: Mr. Burr has made an objection.

MR. CASEY: Would you restate that question, Mr. Walton for the Board?

MR. WALTON: You have yourself, recently, on October 3, 1960, at 8:45 PM, have you not, broadcast public criticism of these appellants?

MR. BURR: I'll object to the question as being entirely outside the scope of affairs, it has not the faintest relevance as to whether or not these people should be retained or not retained. We are not trying Mr. Fabricius, that's obviously the intent and design of the appellants.

MR. WALTON: That's not true, Mr. Burr. Mr. Casey — whose standards are we to be guided by, Mr. Fabricius or

MR. BURR: If you'd take the time to read the notices of non-retention, Mr. Walton, you'd find that they are not signed by Mr. Fabricius, they are signed by the School Board.

MR. WALTON: I appreciate that, Mr. Burr.

MR. BURR: We're not trying this man, he didn't sign the charges against either or both of these people.

MR. WALTON: I refuse to engage in colloquies with this counsel.

MR. CASEY: Objection overruled, proceed.

MR. WALTON: Do you remember the question, Mr. Fabricius?

MR. FABRICIUS: It was something about public criticism of the appellants.

MR. WALTON: As recent as October 3, 1960, by broadcasting the same.

MR. FABRICIUS: Would you please tell me —

MR. WALTON: I would like to mark Appellants Exhibit — may I have a number please?

Let me hand it to Mr. Fabricius and identify it. Mr. [385] Fabricius I hand you Appellant's Exhibit 24 — would you like to skim over it briefly and tell the Board what it appears to be?

MR. FABRICIUS: It appears to be the speech I made on the radio.

MR. WALTON: Oh, I didn't ask you about that. Do you recognize it, Mr. Fabricius?

MR. FABRICIUS: Yes.

MR. WALTON: What is it?

MR. FABRICIUS: It's apparently the text of a radio talk given here — this fall just prior to the recall election.

MR. WALTON: By whom?

MR. FABRICIUS: By me.

MR. WALTON: I take it from having examined the name that you don't feel any restrictions are imposed upon the superintendent to discuss the qualifications of professional persons? Is that correct?

MR. FABRICIUS: I don't know that I discussed the qualifications.

MR. WALTON: Didn't you refer to the troublesome trio consisting of

MR. FABRICIUS: The appellants are not named in there, I believe.

MR. WALTON: They were alluded to, weren't they?

MR. FABRICIUS: You might say that.

MR. WALTON: Would you?

MR. FABRICIUS: Yes. That's right.

MR. WALTON: Very well. Then you did discuss their professional qualifications in that address, did you not?

MR. FABRICIUS: I don't know as I discussed their professional qualifications.

MR. WALTON: Did you not refer to them as unethical in that talk?

MR. FABRICIUS: I don't recall the exact words, no.

MR. WALTON: I will invite you Mr. Fabricius to examine it and then tell the Board at a later time this evening, whether or not there are any incorrections in that transcription, according to your opinion.

MR. FABRICIUS: As I don't happen to have a copy of the original, it would be impossible for me to say

whether there are any incorrections — any incorrect statements there or not.

MR. WALTON: You have just perused it, have you not?

MR. FABRICIUS: Perused is right.

[386] MR. WALTON: Did you see anything incorrect in that transcription?

MR. FABRICIUS: As I told you, I don't have the text of the original and it would be impossible for me to make a definite statement on it.

MR. WALTON: Mr. Fabricius, do you know how many of the teachers employed during the 1958-59 school year failed to return the following school year?

MR. FABRICIUS: Off-hand, no.

MR. WALTON: Would 14 be a correct number?

MR. FABRICIUS: I wouldn't know.

MR. WALTON: If I were to tell you that there were 14, sir, would you have any reason to dispute that?

MR. FABRICIUS: I would certainly want to check the figures and I would also want to determine for what reasons they didn't return.

MR. WALTON: In your opinion, Mr. Fabricius, if you had occasion only to recommend 3 non-retentions in Wrangell during the 15 year period, can you explain why the turnover in Seward has been so great in the last few years.

MR. FABRICIUS: Well, the turnover hasn't been so great by non-retentions by any means. We've had a number of teachers who got married and leave, and a number of them who went out to other positions because they wanted to take other positions. We have some gone out to school and I don't feel that our turnover in Seward has been any greater than any other school of comparable size.

MR. WALTON: I have no further questions.

MR. BURR: I have no further questions of this witness. I should like to stipulate, Mr. Walton, however, to avoid recalling Mr. Blue and Mr. Watts, that they made statements, public statements on the radio

at or about the same time Appellants Exhibit 24 was made.

MR. WALTON: Mr. Watts said that he did not.

MR. BURR: Neither Mr. Blue nor Mr. Watts made a statement?

MR. WALTON: Did Mr. Blue make a statement on the radio?

Mr. Blue answered that he did. On what date?

MR. BURR: You so stipulate?

MR. WATLON: As far as Mr. Blue's statement's concerned.

MR. BURR: Very well. I should like to call for one

MR. WALTON: Oh, excuse me, Mr. Burr, I should like to ask this witness very generally about this Exhibit 21. May I ask this witness? I [387] have here the Board's Exhibit 21, which appears to be letter dated November 9, 1960 and signed by numerous teachers?

MR. FABRICIUS: That's right.

MR. WALTON: Bearing also the signature of Mr. Robert Winters?

MR. FABRICIUS: Right.

MR. WALTON: Do you know sir, whether or not — how was this document come to be prepared and signed?

MR. FABRICIUS: The Seward District Teachers Association of their own volition after having listened to this — to these events that took place here — of their own volition, the group came up with that statement and willingly signed it, which can be attested by any number of our Seward District Teachers Association right now.

MR. WALTON: And did all the members of the SDTA sign it?

MR. FABRICIUS: I believe there are possibly two who did not. Whether they were even asked to sign it or not, I have no knowledge.

MR. WALTON: I see. When did you first learn that this statement had been signed?

MR. FABRICIUS: When they brought it to me after their meeting.

MR. WALTON: Which was when?

MR. FABRICIUS: Oh, I don't know, the other day. When was it — the teachers can you tell you that better than I can.

MR. WALTON: I want to know when you obtained it?

MR. FABRICIUS: It was here prior to the start of the continuation of this hearing.

MR. WALTON: Well, when did this hearing continue? It continued on Friday, didn't it?

MR. FABRICIUS: That's right.

MR. WALTON: Did you receive it, Friday?

MR. FABRICIUS: Either Thursday or Friday, I'm not sure which.

MR. WALTON: Before you saw it, did you know that such a letter was being circulated?

MR. FABRICIUS: Did I know that such a letter — I knew that they were contemplating something, but as to its contents I did not know.

MR. WALTON: May I inquire how you knew they were contemplating it?

MR. FABRICIUS: One of the teachers told me that they were, didn't like the way things were going here and they didn't like the attempted character assassination and they wanted to make a statement.

[388] MR. WALTON: Who told you that?

MR. FABRICIUS: I don't recall which one it was at present. It could possibly have been Mr. Winters, it could have been any one of several people.

MR. WALTON: Do you believe that the statements critical of you are an attempt to assassinate your character, Mr. Fabricius?

MR. FABRICIUS: I'm not expounding what they had in mind, that's for them to define not me.

MR. WALTON: No further questions.

MR. BURR: No further questions.

I should like to call Mr. Blue for several questions, please. I should like to remind you Mr. Blue that you're still under oath as a witness.

MR. BLUE: I understand that sir, thank you.

MR. BURR: Speaking of oaths, Mr. Blue, you took

an oath to tell the truth, the whole truth and nothing but the truth, so help you God, and in that regard I should like to ask you whether or not you do believe in God?

MR. BLUE: Yes sir, I do.

MR. BURR: Have you always had this

MR. BLUE: I beg your pardon, sir, I can — will you read the question, please?

MR. BURR: Well, I asked you if you believed in God?

MR. BLUE: Mr. —

MR. BURR: The same God that we made reference to when you took the oath to tell the truth.

MR. BLUE: Mr. Burr, this is a tremendous problem with me, really — it's a tremendous problem to me and really a difficult problem to answer and I have given a good deal of thought to it. I have done a good deal of discussing on it and I can't categorically say that God exists, nor can I deny the existence of God. It comes down simply to a matter that honestly I don't know and I wish I would. This is an extremely important problem and I would like to know, but I'm afraid that I do not have an actual conviction, I'm still wrestling this problem.

MR. BURR: As an educated man, now, Mr. Blue, you recognize the distinction between an atheist and an agnostic, don't you?

MR. BLUE: Yes, I do.

MR. BURR: Would you categorize yourself in the latter category?

MR. BLUE: Well, what I have said, I'm afraid, places me in that category, yes, sir.

[389] MR. BURR: Well, this letter from Mr. Miller makes the statement that you made reference to the Bible as this book of fables. Now, would that be your statement, or would it not?

MR. WALTON: Now if your please, Mr. Chairman, of all the exhibits that Mr. Burr has endeavored

to introduce into evidence in this case, I have objected to only two. One of which was the self-serving statements of the Board Members, stating that certain regulations had been passed by the Board, which is of crucial importance in this case. The Second exhibit which we have objected to has been this Miller letter. The reason we have objected to is because we, by Mr. Burr's own admission have no opportunity to cross-examine the apparent author of this letter. Mr. Burr has advised us so in the course of this hearing that the Miller's are out of the state, I believe you stated that, Mr. Burr, did you advise me that they were

MR. BURR: Address your remarks to the chair, Mr. Walton.

MR. WALTON: Mr. Chairman, will you please ask Mr. Burr to tell us where he told us these people were?

MR. BURR: The witness hasn't answered the question yet.

MR. WALTON: I'm asking the chair a question and I'd appreciate an opportunity for the chair to answer.

Mr. Chairman, I believe Mr. Burr advised the Board on an earlier occasion the apparent author of this document is not in the State of Alaska. Would you please inquire of Mr. Burr if he knows where he is?

MR. CASEY; Do you know, Mr. Burr?

MR. BURR: I don't even know Mr. Miller.

MR. WALTON: May I ask the chair to inquire if he has any information as to the whereabouts of the author of the letter?

MR. BURR: Mr. Chairman, this is getting quite far afield.

MR. WALTON: Then, will you stop questioning about a document which we cannot crossexamine on.

MR. BURR: This is the first time — I'm not using the document as such. I have no objections if the document is not introduced at all in the record. I should like to ask the witness the question of if he

has ever made reference to the Bible as a book of fables, without regard to the Millers. I can care less about the Millers.

MR. BLUE: No sir, I have not in those words.

MR. BURR: You deny ever making a statement to that effect, then?

MR. BLUE: No sir I don't, not to that general effect, but that's a distorted version.

MR. BURR: Well, give me your version, Mr. Blue?

[390] MR. WALTON: I'm going to object to any further questioning along this line unless the Board will stipulate that this was one of the reasons for non-retention of Mr. Blue. If the Board will stipulate to that, Mr. Burr may gladly inquire. If it wasn't one of the reasons for non-retention, then it's highly improper.

MR. BURR: I submit this has a relevance insofar as it bears on this man's reliability as a witness.

MR. WALTON: Mr. Burr as a lawyer knows very well that any such question is wholly and highly improper. But I'm first going to ask the Board to rule on my question, will the Board stipulate to me that this is one of the reasons he was non-retained. Mr. Burr advises that the Board will not so stipulate, is that it?

MR. BURR: Mr. Burr hasn't made any advice for the record, Mr. Walton and if you're going to paraphrase me, I wish you would quote me accurately.

MR. WALTON: Well, you speak loudly enough to be picked up on the tape, I can certainly hear it.

MR. BURR: You have the most sensitive hearing organs however, you can hear when it's convenient.

MR. WALTON: All right, play back the tape, please?

MR. BURR: This is a needless waste of time. If you have an objection, make it.

MR. WALTON: Well, I've made it. I'd like a ruling on it now. Simply this I asked the Board is this one of the reasons for the non-retention of Mr. Blue.

His opinions as to the existence of God? May I please have an answer to that simple question?

MR. CASEY: Proceed with the hearing, Mr. Walton.

MR. WALTON: Mr. Chairman, do I understand that the Board will not answer my question? I caution the Board to consider the question carefully, this is extremely important.

MR. BURR: Now, that you're admonishing the Board of their duties, Mr. Walton, do you want to admonish counsel as to his duties in interrograting the witness? Apparently you not only prescribe the rules, but you make them.

MR. WALTON: Mr. Chairman, will you please kindly advise counsel of the Board to refrain from engaging in arguments with me. I've asked the question — simply, it is this — was this one of the reasons for non-retention of Mr. Blue. Mr. Blue has the right to know why he was non-retained.

MR. BURR: Mr. Blue has entered no objections as yet.

MR. WALTON: I am his attorney, I enter it for him.

MR. BURR: Well, I am representing the Board and I submit that the objection has no merit.

[391] MR. WALTON: Thank you, Mr. Burr.

MR. CASEY: Mr. Walton, would you like to proceed with this hearing.

MR. WALTON: Mr. Chairman, may I please ask does the Board decline to answer the question? Yes or no.

MR. CASEY: You have heard we have advice that we don't have to answer this question, therefore, we don't intend to answer it.

Mr. Walton, as you know, you're had a bill of particulars and it's very clear and if you have a specific question to that bill of particulars, go ahead and ask it.

MR. WALTON: My specific question, Mr. Chairman, is this, is Mr. Blue's religious beliefs and convictions comprised within the allegations contained in the bill of particulars?

MR. CASEY: Mr. Walton, Mr. Blue's character as a witness is in issue.

MR. WALTON: I take it then this is the reason for the questioning, Mr. Chairman, and not because this was the possible grounds for non-retention, is that correct?

MR. BURR: For the Board, Mr. Walton, I'll make this statement, if Mr. Casey doesn't subscribe to it, he can stop me. This interrogation has not to do with the grounds that was stated for non-retention in the bill of particulars, it has only to do with his capacity as a witness and whether or not the oath that he took has any significance insofar as it might relate to the reliability of his testimony.

MR. WALTON: I see. Now, Mr. Chairman, I would like to ask one lawyer to a fellow lawyer, one question and this is a very technical and difficult question, I'm sure Mr. Burr has studied it. Mr. Burr, do you represent to this Board that this is a legitimate line of questioning as ruled upon by courts in the past?

MR. BURR: Mr. Walton, as I remember in the first hearing of this case, I didn't preside in the appellant form, but as I remember saying the objections made and one of the objections made by yourself was the fact that these witnesses were not placed under oath at the first hearing.

MR. WALTON: Exactly.

MR. BURR: Well, I should think you would be the last one to challenge this man taking an oath and having me interrogate him as to whether or not that oath means anything — the snap of a finger. If it doesn't, I see no reason

MR. WALTON: Why don't you just ask him that question?

MR. BURR: I'm trying to.

MR. WALTON: But if you're going to go into the question of this man's religious belief which is another question

[392] MR. BURR: I can still ask about his religious beliefs.

MR. WALTON: Very well.

MR. BURR: I'm concerned about whether or not this oath means anything to him because it may have some bearing upon whether or not the Board wants to believe his testimony.

MR. WALTON: Very well, then ask the question, I'll not object. Ask him if his oath does mean anything to him.

MR. BURR: Does this oath mean anything to you, Mr. Blue?

MR. BLUE: Which oath are you referring to sir, the oath

MR. BURR: The oath that was administered to you by your counsel when you testified?

MR. BLUE: Yes sir, it means a very greal deal to me.

MR. BURR: What does it mean to you?

MR. BLUE: It means exactly this, that I am honor bound to tell the truth on the standard generally accepted by people as the most important standard of all to swear by.

MR. BURR: What people — what is important to swear by? What are you talking about?

MR. BLUE: People, I suppose when they swear, swear by that they hold to be honorable and fine and good. I believe when people believe in God that then this is their standard and if they make a solemn or binding statement, they usually make an oath or swearing made, God's thunderbolt strike me dead unless I am telling the truth or so forth, is merely a way to me affirming that their intent to tell the truth is direct and honorable. I intend to tell the truth and I shall do so to the best of my ability and if God will help us I certainly will be most happy to accept that help.

MR. BURR: You're not disdaining his help, but you're not going to solicit it, is that it?

MR. BLUE: I certainly would solicit it if I felt that would do me good.

MR. BURR: Have you made any attempt to engender your students to this philosophy, Mr. Blue?

MR. WALTON: I object to the line of questioning. Mr. Burr was supposed to be interested in the question of what this oath means to this witness.

MR. BURR: All right. I'll go back to the question in issue here. Sir, when you take an oath to tell the truth, the whole truth and nothing but the truth, so help you God, we can omit the last part of it and you would feel just as bound to tell the truth as if you understand it without reference to God?

[393] MR. WALTON: I'm going to object to this line of questioning ***

* * *

[396] MR. BURR: Next witness for the Board will be Mr. Naegel. Will you please come forward. Will you raise your right hand, please. Do you swear the testimony you are about to give will be the truth, the whole truth and nothing but the truth, so help you God?

MR. NAEGEL: I do.

MR. BURR: Will you state your full name?

MR. NAEGEL: K. G. Naegel.

MR. BURR: And your occupation, sir?

MR. NAEGEL: Teacher.

MR. BURR: You teaching presently in the School System at Seward?

MR. NAEGEL: Yes, I do.

MR. BURR: Do you know Mr. Watts and Mr. Blue, the respondents in this case?

MR. NAEGEL: Yes, I do.

MR. BURR: If you know them to identify them, will you point towards them, please?

MR. NAEGEL: Mr. Watts and Mr. Blue. (pointing)

[397] MR. BURR: Do you recall any statements made by Mr. Watts relative to the tenure of Mr. Fabricius as a teacher and if so, tell me, when and where?

MR. NAEGEL: Yes I recall the statement about it the second or third day that I arrived in Seward.

MR. BURR: When would that have been, sir?

MR. NAEGEL: The first or second day of school.

MR. BURR: Of what year?

MR. NAEGEL: 1960.

MR. BURR: Can you tell me what you overheard Mr. Watts say?

MR. NAEGEL: I did not overhear Mr. Watts say it, he said it directly to me.

MR. BURR: Will you state that please for the record?

MR. NAEGEL: The full conversation?

MR. BURR: Yes.

MR. NAEGEL: The full conversation — I would not remember the full conversation because it was a process of an hour or so. It was in regards to the Superintendent and the fact that he would probably not be here more than a month or so. And over the period of an hour or so, he made the statement, that if it was the last thing they would do, they would get Mr. the superintendent.

MR. BURR: And by they — do you have any information as to who they were?

MR. NAEGEL: Nothing more than the fact that we were discussing the fact of the group that were involved.

MR. BURR: Do you have any other information about Mr. Blue?

MR. NAEGEL: None at all about Mr. Blue.

MR. BURR: Mr. Watts?

MR. NAEGEL: The only other thing that Mr. Watts ever said that I paid any attention to was the fact that at a recess period he made the statement that he felt that the administration, both Mr. Frampton nor Mr. Fabricius was either capable or competent of making a decision on the right to hire and fire the teachers and he felt that the community, that the public should make that decision.

MR. BURR: Thank you, I have no other questions.

[402] MR. BURR: The next witness will be Mrs. Vaughn. Please come forward. Raise your right hand, ma'am. Do you swear the testimony you are to give will be the whole truth, nothing but the truth, so help you God? Have a seat, please. Will you state your full name?

MRS. VAUGHN: Ella B. Vaughn.

MR. BURR: Are you a teacher?

MRS. VAUGHN: Yes.

MR. BURR: How long have you been a teacher, Mrs. Vaughn?

MRS. VAUGHN: Twenty-two years.

MR. BURR: And how long have you been in the Seward School System?

MRS. VAUGHN: This is my fourth year.

MR. BURR: How long have you known Mr. Fabricius?

MRS. VAUGHN: Since he came here.

MR. BURR: Mrs. Vaughn, were you present at a faculty meeting in the Fall of 1958. Do you have any recollection of so being?

MRS. VAUGHN: Yes.

MR. BURR: Do you recall whether Mr. Fabricius was there?

MRS. VAUGHN: Yes, at one of the meetings.

MR. BURR: Do you recall whether either Mr. Blue or Mr. Watts were present?

MRS. VAUGHN; I don't know just which meeting you referred to. There's one we've been speaking of was over at the Grade School and there was one over here.

MR. BURR: Do you recall — would you tell me what you recall of what was said of the topic of conversation of the one over here.

MRS. VAUGHN: I can't remember just what meeting it is and just what was said.

MR. BURR: You have made some of the statements attributed to Mr. Fabricius, have you not, Mrs. Vaughn, during this proceeding?

MRS. VAUGHN: Part of them. I haven't been here all the time.

MR. BURR: Would you tell me whether or not you have any recollection of the statements that have been attributed to Mr. Fabricius at this meeting?

MRS. VAUGHN: No, I never heard them.

MR. BURR: At either meeting or both of them?

MRS. VAUGHN: I didn't hear them — if you mean any of the derogatory statements

MR. BURR: Yes.

[403] MRS. VAUGHN: I didn't hear those.

MR. BURR: Did you hear any statements made by Mr. Fabricius to the effect that no teachers could talk to the Board?

MRS. VAUGHN: No.

MR. BURR: Did you hear any statement by Mr. Fabricius that was insulting in your opinion or in any way shocking to you?

MRS. VAUGHN: No.

MR. BURR: Were you present at the Board Meeting in the Fall of 1958 or 1959 at which time Mr. Fabricius read a letter from the Board?

MRS. VAUGHN: I was.

MR. BURR: Did you ever hear him make any statements that the SDTA was his enemy and was working against him?

MRS. VAUGHN: No.

MR. BURR: Did you ever hear Mr. Fabricius make any statement concerning that the teachers couldn't stand in the hall and talk together?

MRS. VAUGHN: No.

MR. BURR: Do you know of any bulletin that was ever sent out to that effect to the teachers?

MRS. VAUGHN: Not definitely, to that effect.

MR. BURR: Well, do you know of any similar to that? From Mr. Fabricius?

MRS. VAUGHN: Just the regular rules that we have in every school that teachers shouldn't congregate and talk while their room is unattended.

MR. BURR: Have you known of this rule in other school systems, Mrs. Vaughn?

MRS. VAUGHN: Certainly.

MR. BURR: So there is nothing unusual about that?

MRS. VAUGHN: No.

MR. BURR: Did Mr. Fabricius ever say anything about buzz sessions that has been referred to?

MRS. VAUGHN: No.

MR. BURR: Did he ever say anything to your recollection about remembering his enemies?

MRS. VAUGHN: No.

MR. BURR: Have you ever heard Mr. Fabricius say anything in your opinion that was shocking or insulting?

MRS. VAUGHN: No.

[404] MR. BURR: You've known Mr. Fabricius now for approximately 2 years?

MRS. VAUGHN: Since I was teaching in the school.

MR. BURR: You were teaching here at the time he arrived?

MRS. VAUGHN: I taught here one year with Mr. Carlson.

MR. BURR: So you have been here since he came. He came in the fall of 1958, so this would be going on the third year.

MRS. VAUGH: I'm on my fourth year.

MR. BURR: During this period of time, Mrs. Vaughn, would you say you've had an opportunity in your relationship with him as teacher-superintendent, to form an opinion as to his character for truth-telling?

MRS. VAUGHN: Yes, my relationship has been just as a teacher in the Grade School. I've had very few talks with him.

MR. BURR: But you have been in a position to form an opinion, have you not, in your dealings with him.

Tape ran out - replaced.

MR. BURR: The last question as I remember, Mrs. Vaughn, was to the effect of whether or not you have had an opportunity of forming an opinion of Mr. Fabricius, his character in particular — his character of truth-telling?

MRS. VAUGHN: I've had no opportunity, no, as far as that goes.

MR. BURR: Have you ever caught him in a lie?

MRS. VAUGHN: No, as far as I am concerned, he always tells the truth.

MR. BURR: Do you have any reason to believe that he would take an oath and tell a falsehood?

* * *

[1] The meeting was called to order by Cecil Casey, President of the Seward School Board. The following Board members answered to roll call: Mrs. Whitmore, Mr. McRae, Mr. Jeffrey and Mr. Casey.

* * *

[7] MR. BONEY: That's all and thank you. The Board would like to call Ben F. Frampton as its next witness.

You will be seated Mr. Frampton. Will you state your full name?

MR. FRAMPTON: Ben F. Frampton

MR. BONEY: Are you a resident of Seward, Alaska?

MR. FRAMPTON: Yes, I am.

MR. BONEY: Are you a teacher in the Seward Public Schools?

MR. FRAMPTON: Yes, I'm Principal in the Grade School.

[8] MR. BONEY: On April 28, 1959, did you have an occasion to talk to Mr. James Watts?

MR. FRAMPTON: Yes.

MR. BONEY: Would you state to the Board what was the nature of that conversation.

MR. FRAMPTON: Mr. Watts came by my office and told me that he would like to see me in my wife's room. This was rather an unusual thing, but I went down with him to that room. There he told me that he had been a friend of mine of long standing and he had been selected as a person to come to me to see if I wanted to join a group who were interested in ousting the Superintendent. He told me at that time too that I must realize that the other issues that were up before the Board were not the real issues. That getting rid of the Superintendent was the real issue. He asked me and my wife if we cared to join them. I told him at that time I could not be a party to any of that sort of thing. That I was wholeheartedly behind the Superintendent and the Board, and I couldn't go along with them. I at that time asked him who the other persons might be. "Under the circumstances I would rather

not say", he said. That substantially is the essence of our conversation.

MR. BONEY: Is your wife, Mrs. Frampton, a teacher in the Seward Public School?

MR. FRAMPTON: Yes, she is.

* * *

[22] MR. BONEY: I'd like to call Mrs. Frampton, as the next witness.

Will you give your name, please ma'am.

MRS. FRAMPTON: Margaret M. Frampton.

MR. BONEY: And what is your occupation?

MRS. FRAMPTON: I am a teacher of the first grade here in the school.

MR. BONEY: How long have you been a teacher, Mrs. Frampton?

MRS. FRAMPTON: Ten years.

[23] MR. BONEY: And how long have you been a teacher in the Seward Public Schools?

MRS. FRAMPTON: Seven years.

MR. BONEY: And where did you teach before you taught in the Seward Public Schools?

MRS. FRAMPTON: I taught at the Bayview School. I also taught at South Naknek.

MR. BONEY: On or about the 28th day of April 1959, did you have occasion to have a conversation with Mr. James Watts?

MRS. FRAMPTON: Yes, I did.

MR. BONEY: And will you relate to the Board what was the nature of your conversation with Mr. Watts.

MRS. FRAMPTON: I can practically ditto what Mr. Frampton said. He asked us to join in this group to get rid of the Superintendent. He said that the contracts that were at stake that were coming up before the Board were not the main issue. He also stated that he didn't want Mr. Frampton to be hurt. He also said that he realized that I was only concerned as far as my husband was concerned. And which I took as an insult. I think I am capable of say-

ing what's right and wrong. Now, I am no expert, but as far as I'm concerned I know what's right and wrong.

* * *

[26] MR. WALTON: I would like to ask you just one question. Prior to your conversation with Mr. Watts, did you hold the profession of teaching in high esteem?

MRS. FRAMPTON: Well, I certainly did.

MR. WALTON: And how did you feel after your conversation? Did you still hold the profession of teaching in high esteem?

MRS. FRAMPTON: I do, but I think there are people in all professions who don't stand up to it.

MR. WALTON: In other words, your estimate of the profession of teaching was not diminished by virtue of your conversation with Mr. Watts?

MRS. FRAMPTON: I don't believe one man can spoil a profession. No.

MR. WALTON: I am inclined to agree with you. The question to be specific again is, was your respect for the teaching profession diminished? The profession as a whole, diminished as a result of that conversation?

MRS. FRAMPTON: All right, if we're going to take it to that, yes. It was diminished to a certain extent.

MR. WALTON: You mean you had less respect for the profession of teaching after the conversation that you had before? I just ask for a straight-forward answer.

MRS. FRAMPTON: You sure did. Would you consider it a straightforward question?

MR. WALTON: I certainly do. And I repeat it. Was your respect for the teaching profession less after your conversation?

[27] MRS. FRAMPTON: I think I choose not to answer that question because there is no way to answer it that doesn't put me in the soup.

MR. WALTON: That's your privilege. No further question.

* * *

[35] MR. FABRICIOUS: Well, I definitely know who was up in the City offices using their mailing list and their equipment to mail them, yes.

MR. WALTON: You say you know who was using mailing equipment to mail them?

MR. FABRICIOUS: That was my statement. And I believe if you wanted to search the community you would find a good many people who were personally handed this very document.

MR. WALTON: Now, Mr. Fabricious, were you present when that mailing equipment was used?

MR. FABRICIOUS: I was, and I was also informed by the City Manager at that time.

MR. WALTON: I am not interested in hearsay statement, I want to know just what you saw. You were there, were you not?

[36] MR. FABRICIOUS: I was there. That's right.

MR. WALTON: And where was that incident?

MR. FABRICIOUS: It took place in the City Hall.

MR. WALTON: In one particular room in the City Hall?

MR. FABRICIOUS: Well, there was a little alcove off there. Do you want information, or do you just want me to answer questions?

MR. WALTON: Just answer questions.

MR. FABRICIOUS: I thought so.

MR. WALTON: Now, on how many occasions was the mailing equipment used in your presence?

MR. FABRICIOUS: Once.

MR. WALTON: Do you know when?

MR. FABRICIOUS: What do you mean by when?

MR. WALTON: The date.

MR. FABRICIOUS: At this time I wouldn't recall the date. No.

MR. WALTON: Do you know the approximate date?

MR. FABRICIOUS: It was along the spring sometime.

MR. WALTON: The spring of 1959?

MR. FABRICIOUS: I believe so. If you want to authenticate that you can easily do so without asking my testimony for it.

MR. WALTON: And who was using the mailing equipment when you were present?

MR. FABRICIOUS: At the time I happened to be in there Mr. Watts and Mr. Swick were using it.

MR. WALTON: Was Mr. Blue using it in your presence?

MR. FABRICIOUS: No at that time, he wasn't no.

MR. WALTON: How long were you in the presence of Mr. Watts?

MR. FABRICIOUS: Not for any length of time.

MR. WALTON: How long is that?

MR. FABRICIOUS: Oh, a few minutes.

MR. WALTON: And can you describe exactly what you saw Mr. Watts do?

[37] MR. FABRICIOUS: I was informed at the time. I know what you want. You want the questions answered to suit your testimony. I'm here to give information.

MR. WALTON: You choose the answer and I'll choose the question. What did you see Mr. Watts do?

MR. FABRICIOUS: I saw them working with this mailing addressograph.

MR. WALTON: And can you describe what you saw Mr. Watts do with the addressograph machine?

MR. FABRICIOUS: Not especially, no, other than - I didn't give it that much consideration.

MR. WALTON: You mean you didn't observe?

MR. FABRICIOUS: I saw them over there working with the machine.

MR. WALTON: Did you see Mr. Watts do anything other than the fact that he was working with an addressograph machine?

MR. FABRICIOUS: That was enough, and I was informed by the City – I know you're not interested in that.

MR. WALTON: That's hearsay and we have no opportunity to cross-examine.

MR. FABRICIOUS: All right, go ahead.

MR. WALTON: You may bring it out, if you wish, on rebuttal, but I will not bring out hearsay statements. Do you know.

MR. BONEY: Mr. Chairman, the witness has a right to finish his answer, and I think he should be able to complete it.

MR. WALTON: But it must be responsive to my question. I ask him what he saw and he answered "I was informed". Now the next question is this. Did you see the papers that went into the addressograph machine?

MR. FABRICIOUS: No.

MR. WALTON: Thank you. Now, have you any idea what Mr. Watts had in mind - what his intention was at the time he was working with that addressograph machine?

MR. FABRICIOUS: I'm not a mind reader, no.

MR. WALTON: Did he express to you what he intended to do?

MR. FABRICIOUS: I never talked to Mr. Watts.

MR. WALTON: Then you would have no reason to say that at that particular moment he was intent on injuring the professional standing of the superintendent of the Seward Public Schools.

[38] MR. FABRICIOUS: Put it on that basis, no.

MR. WALTON: Thank you. Here is Exhibit 7. On that particular occasion, when you saw Mr. Watts using the addressograph machine, did you see copies in the addressograph machine resembling Exhibit 7?

MR. FABRICIOUS: I can't say that I did, no.

MR. WALTON: Did you see copies of Exhibit 7 anywhere near the addressograph machine at that time?

MR. FABRICIOUS: I can't say that I did.

MR. WALTON: Did you see them anywhere in the alcove at that time?

MR. FABRICIOUS: I saw a pile of them there, yes. I didn't go close enough to examine them.

MR. WALTON: How far away were you?

MR. FABRICIOUS: Oh, 10 or 15 feet.

MR. WALTON: 15 feet, and from 10 or 15 feet, you are prepared to state -

MR. FABRICIOUS: No, I'm not prepared to state that it was exactly that.

MR. WALTON: Then it might have been something else?

MR. FABRICIOUS: Oh sure, it might have been the Lord's Prayer.

MR. WALTON: That's all, Mr. Fabricious.

MR. BONEY: At this time we will have to call a member of the Board. Three members of the Board actually received copies of this Exhibit No. 7, and we will call one unless you will stipulate that Mr. Watts delivered a copy of Exhibit 7 to three members of the Board. Will you stipulate, counsel?

MR. LEITENBURG: Just a moment. I think we ought to ask Mr. Watts if he can stipulate to that. I'll ask him in secret. We would like to inquire to which Board members you would like to stipulate that Mr. Watts delivered a copy of this Exhibit 7.

MR. BONEY: Mr. Jeffrey, Mr. Casey, Mr. McRae and Mrs. Whitmore.

MR. LEITENBURG: We shall stipulate.

MR. BONEY: The Board will now call Mr. Watts as its next witness.

MR. WALTON: Before you proceed, would you wait just a moment? Now, we object to the calling of one of the accused. For the purpose of this hearing, as provided for by Statute is to permit the persons charged with the opportunity of facing those who have charged them. Mr. Watts is not borne witness against himself nor Mr. Blue; and he is not about to today. [39] And it would be a real transgression of his rights if this Board were to permit him to now be used by the board against himself. It's contrary to the provision of the Statutes.

MR. BURR: What provisions are you talking about, Mr. Walton?

MR. WALTON: The second sentence under the section commencing under the word "Provision for Hearing", reading as follows: "The teacher, or administrator, shall have the right to demand in the above notification, that the hearing being either public or private, he or she represented by counsel" - and here follows the key word - "and he or she have the right and privilege of facing at such hearing any person who has made allegations detrimental to his or her character," - facing any person who has made allegations de-

trimental to his or her character, or which are used as a basis for any decision of Court.

MR. BONEY: There is no statutory provision. If he wants to invoke the Fifth Amendment for his own protection, he should so request.

MR. WALTON: We thank you for offering to us a constitutional right which Mr. Watts enjoyed before he came here tonight, but we're not relying on that.

MR. LEITENBURG: We are expressly not invoking this Amendment.

MR. BURR: On what basis is he denying his being called to the witness stand?

MR. WALTON: The right that the purpose of this hearing is to afford Mr. Watts the opportunity to confront those who have made charges against him. That is the hearing that the statute provides for. It doesn't provide for Mr. Watts to be called here to testify against himself.

MR. BURR: It doesn't make any prohibition against it.

MR. WALTON: It expressly provides for what the purpose of the hearing is. By implication it excludes other matters.

MR. BONEY: Mr. Chairman, Mr. Watts and Mr. Blue are here to - have requested a hearing and in part this hearing is to show why they should not be retained, and on the other hand it is to show why they should be retained. It seems very peculiar to me that we cannot have them here to testify about certain of the facts that are within their own knowledge.

MR. WALTON: I would like a ruling.

MR. BURR: On what grounds.

MR. WALTON: On the statutory grounds.

[40] MR. WALTON: I appreciate the fact that uniformly our objections have been overruled and that none of them have been sustained. But I ask the Board to carefully consider this objection.

MR. CASEY: Overruled.

MR. BONEY: Your name is James Watts?

MR. WATTS: That is correct.

MR. BONEY: And you're one of the respondents here, Mr. Watts?

MR. WATTS: Yes.

MR. BONEY: Mr. Watts, concerning Board's Exhibit 2, I ask you to examine that document and tell me what it is. If you can.

MR. WATTS: It is a petition to the Seward Common Council to order an election for successors to the School Board.

MR. BONEY: Did you circulate that petition?

MR. WATTS: My signature is on the bottom. I believe I did.

MR. BONEY: And do you recognize that as a reproduction of your signature on the bottom? On the bottom of this page?

MR. WATTS: I believe it is.

MR. BONEY: It looks like your signature?

MR. WATTS: Yes.

MR. BONEY: Mr. Watts, I show you Board's Exhibit 7 for identification, which has been admitted here. Board's Exhibit 7, and ask you, did you have anything to do with the distribution of that Exhibit?

MR. WALTON: We object. The question is far too vague, and we ask for a more specific question.

MR. BONEY: I'll withdraw the question and ask another question. Have you even seen a document similar to this before?

MR. WATTS: I have.

MR. BONEY: And did you see this in May of 1959?

MR. WATTS: I did.

MR. BONEY: And did you assist in the circulating of this document? In the community of Seward, Alaska?

[41] MR. WALTON: I object for the previous reason given. Furthermore, it's a leading question.

MR. BURR: It's an adverse witness.

MR. WALTON: Well, you haven't called him an adverse witness.

MR. BURR: He's presumptively an adverse witness.

MR. LEITENBURG: Since when?

MR. WALTON: Why? Leading - too vague. To assist in the circulation. We submit that this so ambiguous that one might answer yes or no without knowing what one was saying. We invite the counsel to be a little more specific. Perhaps Mr. Watts is a mail carrier and he carried one without ever knowing about it.

MR. BONEY: I'll withdraw my question if it will make it easier for Mr. Watts. So there won't be any need for the objection. Mr. Watts, did you ever hand out any of these documents to any of the people in the community of Seward? Yes or no?

MR. WATTS: Yes.

MR. BONEY: And did you ever hand out any copies of this document to members of the School Board? Yes or no.

MR. WATTS: Yes.

MR. BONEY: Did you ever hand out copies of this document to other members of the community?

MR. WATTS: Yes.

MR. BONEY: Did you ever hand out copies of this document to other teachers?

MR. WATTS: I cannot recall.

MR. BONEY: Did you arrange for the printing of this document?

MR. WALTON: Objection. Assuming a fact not in evidence.

MR. BONEY: I'll withdraw the question. Did you make any arrangements whatsoever for the reproduction of this document?

MR. WATTS: I did not.

MR. BONEY: Do you know whether or not Mr. Blue made arrangements for the reproduction of this document?

MR. WATTS: I don't know whether I have to answer that question or not.

MR. LEITENBURG: No, you don't.

[42] MR. BONEY: Of your own personal knowledge, we ask you to answer the question.

MR. WATTS: Will you restate the question again, please.

MR. BONEY: Do you know whether or not Mr. Blue made any arrangements for the reproduction of that document? Or a similiar document? I will withdraw the question. Do you know whether or not Mr. Blue had anything to do with the printing of a document containing the language contained in that document?

MR. WATTS: You're asking me, do I know.

MR. BONEY: Do you know?

MR. WATTS: I do not.

MR. BONEY: Did Mr. Blue tell you that he did?

MR. WALTON: Objection. Hearsay.

MR. BONEY: That's not hearsay. Mr. Blue is here -

MR. WALTON: Then call Mr. Blue. The other was hearsay.

MR. BONEY: I will withdraw it. Mr. Watts, did you have anything to do with the preparation of the contents of this document insofar as content is concerned?

MR. WATTS: I did not.

MR. BONEY: Do you know who had anything to do with the composition of this document?

MR. WATTS: You mean first-hand knowledge?

MR. BONEY: Yes.

MR. WATTS: I do not.

MR. BONEY: You circulated the document but you - with an unknown author.

MR. WALTON: Mr. Boney is not testifying.

MR. BONEY: I'm not testifying, I'm asking him a question.

MR. WALTON: He's asking a leading question. It's a quesion to which he has not yet testified.

MR. BONEY: I'll withdraw the question. Do you know - is the author of this document unknown to you?

MR. LEITENBURG: A while ago that question was irrelevant. I think it still is.

MR. WALTON: We'll stand on your objection to our questions on the same point. It's irrelevant. And, Mr. Chairman, we ask that you rule as you did before.

[43] MR. BONEY: I'll withdraw the question. May I have the document back, Mr. Watts? Did you ever work in the City Hall on an addressograph machine addressing envelopes so that Exhibit 7, or documents containing the same contents as Exhibit 7 could be mailed to members of the public in Seward?

MR. WATTS: I did not.

MR. BONEY: But you did deliver them to the people in the community?

MR. WATTS: Yes.

MR. BONEY: Mr. Watts, I show you Board's Exhibit 6 and ask you if you recognize it.

MR. WATTS: I do.

MR. BONEY: Is that a copy of your contract?

MR. WATTS: The present contract, yes.

MR. BONEY: Are you familiar with Paragraph 4 in your contract?

MR. WATTS: I am aware of it.

MR. BONEY: Mr. Watts, did you ever attend a meeting of the Longshoremen's Local here in Seward with Mr. Blue, and assist in circulating these petitions at the Longshoremen's Local calling for the recall of the Seward School Board?

MR. WATTS: I did not.

MR. BONEY: You did not.

MR. WATTS: That is correct.

MR. BONEY: You never have attended a Union meeting of the Longshoremen's Local here in Seward?

MR. WALTON: That isn't what he testified.

MR. BONEY: I'll withdraw the question. Have you ever taken a petition such as Exhibits 2 and 1, such as, for the same recall election, to any Union Hall in the City of Seward?

MR. WATTS: I have not.

MR. BONEY: You heard the testimony of the Union member here tonight, stating that you were present when Mr. Blue made certain statements before a group of Union members, was his testimony true or false?

MR. WALTON: We will ask that you stress by the particular testimony which you ask Mr. Watts to verify. There were many things said. Which items do you wish Mr. Watts to verify?

[44] MR. BONEY: Do you remember the testimony of the young man that was here tonight and testified that he heard Mr. Blue say in substance that we haven't been able to get the Superintendent so now we're going to get the Board? Did you hear that testimony?

MR. WATTS: I believe I did.

MR. BONEY: Were you present when statements of a similar tenor were made by Mr. Blue?

MR. WATTS: I cannot verify the authenticity of the statement referred to.

MR. BONEY: You cannot remember attending such a meeting. Is that correct?

MR. WATTS: I definitely remember the meeting.

MR. BONEY: You definitely remember the meeting.

MR. WATTS: I do.

MR. BONEY: And you were present at that meeting?

MR. WATTS: I was present at the meeting referred to.

MR. BONEY: What was the purpose of your presence at the meeting? Will you please answer the question, Mr. Watts? What was the purpose of your attending the meeting? Please answer the question.

MR. LEITENBURG: I think it's proper to ask what he did there. I don't think it's proper to ask his purpose. His purpose may have been entirely thwarted by something else. But it's entirely proper to ask him what he did there. His purpose would only be material if it could be adduced from what he did there. And if that purpose and those acts are then relevant. Let's get some acts before we look into motives.

MR. BONEY: I'll withdraw the question. Mr. Watts, were you a member of the Union whose meeting you attended?

MR. WATTS: I was not.

MR. BONEY: And what did you do at that meeting?

MR. WATTS: I walked in and I sat and I walked out.

MR. BONEY: Do you know what Mr. Blue did? At that meeting?

MR. WATTS: I do.

MR. BONEY: Did he make a speech?

MR. WATTS: He made a speech.

[45] MR. BONEY: Did he make a speech concerning the Seward School Board?

MR. WALTON: We object again on hearsay grounds. We again object that this is repetitive. You already have your own witness that so testified. This only repeats what your own witness said; even if he answers as you would like him to answer, he would only repeat what your own witness has previously testified.

MR. BONEY: I respectfully request that this is an immediate question at issue and the statements made by Mr. Blue are at issue, and therefore it's not hearsay. I realize this is not a Court and I wish counsel would also, but even in a Court of Law this kind of testimony would be admissiable. As counsel well knows.

MR. LEITENBURG: We would argue as to its admissability. Let the Chairman rule.

MR. CASEY: I will overrule the objection.

MR. BONEY: Mr. Watts, will you answer the question, please?

MR. WATTS: Please state your question.

MR. BONEY: Did Mr. Blue's speech have anything to do with the Seward School Board? Yes or no.

MR. WATTS: There was some reference to it, yes.

MR. BONEY: And what was the reference to the Seward Board? If you remember.

MR. WATTS: Like the previous witness, I cannot remember all of the things stated.

MR. BONEY: Will you state what you remember?

MR. WATTS: Mostly it was a statement of grievances and a desire for support in trying to solve our school dilemma, which we felt was severe at the time.

MR. BONEY: What was the school dilemma?

MR. LEITENBURG: Wait a minute. This question is, what was the school dilemma? I don't think that's germane.

MR. WALTON: I might support that, Mr. Chairman, by the following: Mr. Blue is accused of having made false and misleading statements at that meeting. It isn't important what the dilemma was. What's important is, what did he say, and was it false. Now, if counsel wants to go into that sort of thing, we're perfectly willing to. We aren't here tonight to discuss what the dilemma in the school of the City Seward is.

MR. BONEY: I will withdraw the question if Mr. Watts doesn't care to answer it.

[46] MR. WALTON: He isn't stating he doesn't want to answer it. We have objected to it.

MR. BONEY: I will withdraw the question, and there is no need for harangue.

MR. LEITENBURG: I object to that. We are not haranguing.

MR. BONEY: No further questions.

We would like to call Mr. Blue to the witness stand.

MR. BONEY: Mr. Blue, are one of the respondents in this matter, are you not?

MR. BLUE: That is correct.

MR. BONEY: On Board's Exhibit No. 7, I ask you to examine it, sir, and state whether or not you had anything to do with handing this document out to various members of the Seward community.

MR. BLUE: What do you mean by having to do with?

MR. BONEY: Did you ever hand this document to any other person?

MR. BLUE: Yes.

MR. BONEY: In the Seward community?

MR. BLUE: Yes.

MR. BONEY: To members of the general public?

MR. BLUE: I am not sure.

MR. BONEY: Members of the School Board?

MR. BLUE: No. Let me qualify that statement. I did not personally hand any of these to any members of the School Board.

MR. BONEY: Did you ever cause these to be handed to any member of the general public, by having someone else do it?

MR. BLUE: Not handing, no.

MR. BONEY: Or mailing?

MR. BLUE: Yes.

MR. BONEY: You did?

MR. BLUE: Yes.

MR. BONEY: And did you arrange for the mailing of these documents to members of the public here in Seward?

[47] MR. BLUE: To the extent that I was part of the American Federation of Teachers Local that created this document.

MR. BONEY: Do you know approximately how many of these were mailed?

MR. BLUE: I don't recall.

MR. BONEY: But a considerable number were mailed to the general public?

MR. BLUE: Yes.

MR. BONEY: And were these mailed to the general public prior to the time they were presented to all members of the School Board?

MR. WALTON: May I first ask counsel to ask the witness if he knows when they were presented to the School Board. So that he can then answer the question.

MR. BONEY: Do you know when these were mailed?

MR. BLUE: Very probably it would be the date of the letter or the day following that they were put in the mail.

MR. BONEY: And do you know when they were presented to the School Board?

MR. BLUE: No.

MR. BONEY: You don't have any idea?

MR. WALTON: Objection.

MR. BONEY: I will withdraw the question. Mr. Blue, you played a part in circulating a petition, such as this, calling for the recall of the Seward School Board, did you not, sir?

MR. BLUE: Will you ask the question again, please?

MR. BONEY: Did you assist in circulating a document for the recall of the Seward School Board in 1959?

MR. BLUE: Yes.

MR. BONEY: And you actually circulated petitions yourself?

MR. BLUE: One petition.

MR. BONEY: And would Board's Exhibit 1, would you examine that and tell me whether or not that looks like your signature on that document?

MR. BLUE: It has a vague resemblance to it. Yes, sir.

MR. BONEY: But you did circulate such a petition?

[48] MR. BLUE: Yes.

MR. BONEY: And you circulated it among the general public? Of the City of Seward.

MR. BLUE: That is correct.

MR. BONEY: And you also made a speech before the Longshoremen's Local, before members of the Longshoremen's Local here in Seward? Concerning this matter, did you not?

MR. BLUE: I don't remember the subject matter of the speech to which you allude, but it's perfectly possible.

MR. BONEY: Now, you are charged here, Mr. Blue, with making a statement before the Longshoremen's Local, in tenor that we haven't been able to get rid of the Superintendent and so we are going to get rid of the Board.

MR. BLUE: Will you explain the word tenor?

MR. BONEY: In substance. Did you make a statement similar to that statement?

MR. WALTON: We object. I think it's important just what the man said. Not regarding what he said in a similar statement.

MR. BONEY: I'll withdraw the question. Do you know what you said?

MR. BLUE: No, I don't.

MR. BONEY: Do you remember the substance of what you said at that meeting?

MR. BLUE: In a very general way. Not specifically.

MR. BONEY: Did you generally state that we have been

unable to get rid of the Superintendent so we are going to get rid of the Board?

MR. BLUE: I don't know. I don't think so.

MR. BONEY: Did you state anything about getting rid of the Board?

MR. BLUE: I probably said something about submitting the Board to recall action, but getting rid of the Board would be the province of the public.

MR. BONEY: Were you a teacher in the public schools at that time?

MR. BLUE: Yes.

MR. BONEY: No further questions.

MR. WALTON: Is the Board now prepared to rest?

[49] MR. BONEY: The Board will rest.

MR. LEITENBURG: Without repeating in its entirety I renew our motion for the same reasons and on the same grounds. The same motion we made the first time the Board rested.

May we have a few minutes to ourselves in regard to the action? It may save more time than we take.

MR. CASEY: We'll have a 10 minute recess.

MR. WALTON: We will call Mr. Watts, to the witness stand.

Your full name, sir, is?

MR. WATTS: James A. Watts.

MR. WALTON: Do you recall hearing this evening testimony by Mr. and Mrs. Frampton pertaining to a conversation held with them and you in May or June 1959?

MR. WATTS: I do.

MR. WALTON: Was such a conversation held?

MR. WATTS: Yes.

MR. WALTON: Where?

MR. WATTS: In Mrs. Frampton's primary room in the grade school building.

MR. WALTON: Do you remember when?

MR. WATTS: That would be the latter part of April, to the best of my knowledge.

MR. WALTON: And who was present?

MR. WATTS: Mr. Frampton and Mrs. Frampton and myself.

MR. WALTON: And how did this conversation happen to take place?

MR. WATTS: I ask Mr. and Mrs. Frampton to speak to them a few minutes in the morning before school.

MR. WALTON: And then what happened?

MR. WATTS: I took them in and I asked their support in a meeting that was to be held that night at 4 o'clock in the same building, where the issue before them would be a question of whether the Seward District Teachers Association, N.E.A. affiliate, would continue their efforts to try to obtain contracts of three non-retained teachers.

MR. WALTON: Who were those teachers?

MR. WATTS: Mrs. Armstrong, Mrs. Svedlund and Mrs. Hollenbeck.

[50] MR. WALTON: In the course of this conversation, did you say anything to either of these people, Mr. and Mrs. Frampton, about the Superintendent? Specifically, did you ask either of them to assist you or anyone else in "getting rid of" the "superintendent"?

MR. WATTS: I did not.

MR. WALTON: Did you say anything similar to that?

MR. WATTS: No.

MR. WALTON: Why did you ask them for their support?

MR. WATTS: For the reason we knew there would be a serious election that night and we needed the support of all of the teachers who were members of the association.

MR. WALTON: And why did you feel you need their support?

MR. WATTS: Because the two committess of the Teachers Association had, first they had written a letter and gone to the School Board and gotten no satisfaction, they had this committee which was the grievance committee, took the problem, the rejection back to the Executive Council of the Teachers Association for their consideration, and at that time they voted unanimously to continue the ap-

peal to the School Board. In the meantime we had gotten information and support from the National Headquarters from the National Education Association to continue this case. In the meantime we asked the contracts for a certain time, and we got no answer.

MR. WALTON: You asked who?

MR. WATTS: The School Board and the Superintendent.

MR. WALTON: And who asked on behalf of the Association?

MR. WATTS: These two committees - I was on both committees - the grievance committee and public relations committee, and later the Executive Council of the Teachers Association. The first time we were rejected flatly. The second time we received no answer.

MR. WALTON: By whom were you rejected?

MR. WATTS: By the School Board and by the Superintendent.

MR. WALTON: And who failed to give you an answer? Whom were you referring to?

MR. WATTS: To the School Board, as the supreme authority.

[51] MR. WALTON: And who, on behalf of that group, made the request and the appeal to the School Board?

MR. WATTS: Would you state that a little more clearly.

MR. WALTON: Specifically, what person on behalf of that group approached the School Board.

MR. WATTS: Do you want the names? Or the Committee?

MR. WALTON: Were you one of them?

MR. WATTS: I was on both committees.

MR. WALTON: Did you personally appear before the School Board on those two occasions?

MR. WATTS: I did on the first occasion. The second time it was a letter.

MR. WALTON: What was Mr. Frampton's response to your request for assistance?

MR. WATTS: He gave no response, but his wife answered first.

MR. WALTON: What did Mrs. Frampton say?

MR. WATTS: She said we are strongly in support of the School Board and the Administration's policies and methods.

MR. WALTON: Did Mr. Frampton say anything?

MR. WATTS: He said "And we agree on that entirely".

MR. WALTON: And then what happened?

MR. WATTS: I stated that I was sorry that they felt that way. I have previously stated by previous testimony they knew that I had been with the school a long time and knew them fairly well. I said I was sorry that there was a disagreement here, we needed their support because the situation was serious, and we hoped that no-one - that there would be no hard feelings, or that none of us would get hurt. But we had to do what we thought best.

MR. WALTON: And then what happened?

MR. WATTS: That was the end of the meeting.

* * *

[53] MR. LEITENBURG: Prior to receiving the Notice of Non-Retention and the Bill of Particulars, did you receive any notice, either oral or written, from your Superintendent, Mr. Fabricious, or from the Board of Education, warning you in any way or manner that your conduct or alleged conduct would subject you to non-retention?

[54] MR. WATTS: How recently, may I ask?

MR. LEITENBURG: Well, did you ever receive such a warning? After May 18, 1959?

MR. WATTS: I would say yes.

MR. LEITENBRUG: When?

MR. WATTS: May 28th.

MR. LEITENBURG: What happened then?

MR. WATTS: I appeared before the School Board for a hearing.

MR. LEITENBURG: And what happened then? I withdraw that. Were you given some warning at that time?

MR. WATTS: Yes.

MR. LEITENBURG: Who issued the warning?

MR. WATTS: The last paragraph of a letter from the attorney for the School Board stating the conditions under which they could possibly non-retain me at an early date just as soon as school started because they had witnessed that I had asked certain teachers, administrators to help in support and effort to get rid of the Superintendent.

MR. LEITENBURG: Did you subsequently after that date receive any such warning?

MR. WATTS: Never.

MR. LEITENBURG: Did you have any conversation after that with Mr. and Mrs. Frampton?

MR. WATTS: What date do you mean?

MR. LEITENBURG: That date you just talked about. May 28th.

MR. WATTS: Yes. May 28th, no.

MR. LEITENBURG: No. That's all.

* * *

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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1967

No. 325

JAMES A. WATTS AND WALTER B. BLUE, Petitioners,

v.

SEWARD SCHOOL BOARD AND BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALASKA

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July 1967

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PETITION FOR A WRIT OF CERTIORARI TO THE
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OPINIONS BELOW

The original opinion of the Supreme Court of Alaska is reported at 395 P. 2d 372. The opinion of the Supreme Court of Alaska on remand from this Court is printed in 421 P. 2d 586. The opinion denying rehearing has not been reported. The Superior Court of Alaska filed no opinion.

JURISDICTION

The judgment of the Supreme Court of Alaska was entered on December 7, 1966, and a timely petition for rehearing was denied February 2, 1967. On May 8, 1967, Mr. Justice Douglas filed an order extending the time for filing this petition to July 3, 1967.

QUESTIONS PRESENTED*

1. May public school teachers be discharged for the exercise of their First Amendment rights of association and criticism of public officials?

2. Is AS 14.20.170 authorizing the discharge of school teachers for "immorality", which was construed by the Alaska Supreme Court to be a "catch-all" extending to "social misbehavior" and which was applied to the exercise of First Amendment rights, unconstitutionally vague and overbroad?

CONSTITUTION, STATUTE AND REGULATIONS INVOLVED

This case involves the First and Fourteenth Amendments to the United States Constitution, AS 14.20.170 prior to amendment by S.L.A.1966 chapter 104, and Seward School Board Regulations E(7) and E(9). They are reprinted in the appendix.

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* If certiorari is granted, petitioners will also argue the following question: Did the Supreme Court of Alaska deny petitioners their rights under the First and Fourteenth Amendments by relying on School Board Regulation E(7) to sustain their discharge?

STATEMENT OF THE CASE

Petitioners Watts and Blue come to this Court for a second time. At the 1964 Term, they sought review of a judgment of the Supreme Court of Alaska sustaining their dismissal as public school teachers in Seward, Alaska, urging that that dismissal violated the First and Fourteenth Amendments. On May 3, 1965 this Court granted certiorari, and vacated the decision below for reconsideration in light of changes in the Alaska statutes which had been enacted while the Petition was pending. Watts v. Seward School Board, 381 U.S. 126. Further briefs were filed by the parties on remand, and oral argument was held in October, 1965. On December 7, 1966, the Supreme Court of Alaska issued its decision on remand, reaffirming, by a 2-1 vote, its original judgment sustaining petitioners' dismissal. The Court below found the changes in Alaska law to be inapplicable to petitioners, a determination which is nonreviewable here. But the Court did not stop there. It substantially altered the grounds on which it was sustaining petitioners' "nonretention" -- that is, their dismissal -- as school teachers. These changes, and the issues presented by the present Petition, can best be understood by placing them in the setting of the prior proceedings as described by this Court's opinion of May 3, 1965:

> Petitioners Watts and Blue were dismissed from their positions as schoolteachers in Seward, Alaska, on grounds of "immorality", which under Alaska Statutes 1962, §14.20.170 was defined as "conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect." Petitioners' dismissals were upheld by the Alaska

Superior Court (Third Judicial District), and on appeal the Alaska Supreme Court affirmed the Superior Court's decision. 395 P.2d 372. The Alaska Supreme Court noted that "[t]he immoral conduct complained of as to the appellant Watts was his holding of private conversations with various teachers in which he solicited their support in an attempt to oust the school superintendent from his job. The allegedly immoral conduct of the appellant Blue was his making of a speech to a labor union at Seward in which he stated, 'We have been unable to get rid of the [school] Superintendent, so we are going to get rid of the Board,' or words to that effect." 395 P.2d, at 374. The Alaska Supreme Court held that this conduct "had a tendency to bring the [petitioners]...and the teaching profession into public disgrace or disrespect," within the terms of the statute, 395 P.2d, at 375, and it therefore sustained their dismissals. 381 U.S. at 126-127.

Thus, as the case returned to the Alaska Supreme Court, petitioners had each been found guilty of "immorality" under Alaska law: Watts for soliciting support in the ouster of the school superintendent, and Blue for his speech to a labor union.

In its second opinion, the Court discussed at some length the meaning of the term "immorality" as defined in S.L.A. 1957, c. 71, §2 (codified as AS 14.20.170), as a ground for "nonretention" of school teachers:

> The use of the term by the legislature must be considered in context. When the facts of this case arose in 1959, SLA 1957, chapter 71, section 2 listed and defined the three causes for which a teacher could be nonretained as:
>
> (a) Incompetency - defined as the inability or failure to satisfactorily perform one's duties,
> (b) Immorality - defined as 'conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect', and
> (c) Substantial noncompliance with the school laws of the Territory or regulations of the Territorial Board of Education.
>
> Of the three causes for nonretention, "incompetency" and "substantial noncompliance" are reasonably specific. "Immorality", on the other hand, is broad and covers any and all conduct of the teacher which tends to bring

> disgrace or disrespect upon the teacher or the teaching profession. This definition would include all conduct from the commission of the most heinous felony down the scale of infamy to social misbehavior. The point in a teacher's conduct beyond which his behavior would tend to bring disgrace or disrespect upon him or his profession, would be one of degree depending upon the rules of society and to some extent upon the mores of the particular community.
>
> Since it does cover such a broad range of conduct, it seems quite likely that the Alaska Legislature originally intended that "immorality" be a "catch-all" cause for nonretention, intended to serve the same purpose as that mentioned in Beilan v. Board of Education... [357 U.S. 399 at 406]. Opinion pp. 7-8, hereafter cited as "Op.", footnotes omitted.1/

This construction of "immorality" as a "catch-all" was subsequently reiterated. (Op. pp. 8,9,40) Applying this interpretation, the Court reaffirmed its prior conclusion that Watts' conversations regarding the Superintendent and Blue's speech constituted "immorality" under the statute. (Op. pp. 27-28) And the Court held that the application of the statute to discharge Watts for this conduct was consistent with the First and Fourteenth Amendments. But it held with respect to Blue's speech that "the constitutional question becomes a close one", which it resolved in Blue's favor. (Op. pp. 49-50) Blue's nonretention for the speech was therefore reversed. But the Court additionally considered two additional grounds, arising out of a single activity which had been relied on by the School Board, and sustained the discharge of both on those grounds. The charge was that Petitioners had participated in the printing and distribution of an Open Letter to the Seward School Board, which was signed by the Seward Local of the American Federation of Teachers. The letter is reproduced at pp. 13-16 of the Court's opinion. Its purpose was stated as follows:

1/ Petitioners challenge the constitutionality of the immorality statute in their brief below on remand, and again, in the light of the construction in the Supreme Court of Alaska's second opinion, in their petition for rehearing.

> The Seward Local takes this means of informing the Seward School Board (and the public) of our stand in the current struggle for a good school. We hold that incidents occurring during the last year have reached such proportions as to be definitely detrimental to the morale of our teaching staff and the effectiveness of the local educational system. (Op. pp. 13)

The letter described these "incidents" and the Local's efforts to obtain changes, which included organizing a meeting at which only one member of the School Board appeared. The letter concluded with a request for a special open School Board meeting and a statement of the improvements in administrative policies for which the Local would press at that meeting. The Court below determined that this conduct constituted "immorality" under its interpretation of the statute, and that it also constituted "substantial noncompliance" with the School Board's Regulation E(7) and was therefore an independent cause for "nonretention" under subsection (c) of §14.20.170. In its findings supporting the conclusion that the conduct was "immoral" the School Board had said that some of the statements in the letter were false, and that they tended to bring the teaching profession and petitioners individually "into public disgrace or disrespect". There was no finding that petitioners made these statements knowing that they were false or in reckless disregard of their truth. The finding of a violation of Regulation E(7) was based on the fact that the Open Letter was circulated to the public without previously presenting the matter as a grievance to the Superintendent, although the Regulation was found to provide that "Grievances, complaints and communications from employees shall be submitted to the Board through the Superintendent".[2/]

2/ There was controversy below whether Regulation E(7) had ever been adopted, since the minutes of the School Board did not so show, and whether, in light of regulation E(9) it was applicable to the circulation of the Open Letter. See pp. 13-16 of Mr. Justice Rabinowitz' dissenting opinion below. Furthermore, the Regulation seems to set forth procedures, rather than a standard of conduct, by describing how a "grievance" (which is an undefined term) is to be processed.

In discussing the petitioners' First Amendment contentions, the Court acknowledged that they had a constitutional right to engage in the conduct which resulted in their discharge. But the Court said, with respect to the Open Letter, that they "exceeded the limits of the exercise of their right of freedom of speech to the extent that they were not entitled to require the Seward School Board to renew their teaching contracts under the tenure law". (Op. pp. 47-49) With respect to Watts' solitation of the teachers, the Court said:

> Appellant Watts had a constitutional right to freedom of discussion with other teachers, but he did not have a constitutional right to have his teaching contract renewed after soliciting teachers on school premises, during school hours, to support a private move to oust the Superintendent, where the effect of these acts was to bring down public disgrace and disrespect on him and his profession and to undermine the morale and discipline of the local school system.3/ (Op. p. 49)

As noted earlier, the Court also concluded that Blue could not constitutionally be discharged for his speech to the Longshoremen's Union.

Mr. Justice Rabinowitz filed an opinion concurring in the reversal of the charge based on Blue's speech, but dissenting from the remainder of the Court's judgment and opinion. While respectfully inviting attention to his entire opinion because of the light it sheds on that of the majority, and particularly on his discussion

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3/ There does not appear to be any evidence to support the conclusion that these interviews were "during school hours", or that they had the stated effect. Since the basis for the characterization of Watts' "move" as "private" is not immediately apparent, we note that the Court earlier said that it was "private" in the sense that it was not supported by "a majority of the newly formed Alaska Federation of Teachers". (Op. p. 29)

of the free speech issues, we shall confine our quotation to his conclusion:

> One of the most important functions of this court is to assure that constitutional rights are vindicated. By today's decision the right to free speech in this state has sustained a serious encroachment. Apparently the principles that free speech encompasses "uninhibited", "robust", and "wide-open" debate on public issues has been shunted aside. In its place has been substituted a holding that cannot fail to curtail discussion among those most intimately concerned with this state's educational system. (Op. p. 35)

REASONS FOR GRANTING THE WRIT

A. The Judgment Below, Contrary to the Settled Course of Decision in this Court, Deprives Petitioners of Fundamental Constitutional Rights.

1. Public School Teachers May Not be Discharged for the Exercise of their First Amendment Rights.

As this case returns here, the discharge of both petitioners has been sustained on the ground that they participated in the circulation of an open letter regarding matters of public interest affecting the school system of Seward, Alaska, and criticizing the school board and the school superintendent. Petitioner Watts' discharge has been sustained on the additional ground that he solicited other teachers in an effort to oust the school superintendent. Both activities are protected by the First and Fourteenth Amendments of the United States Constitution. The Open Letter discussed a matter of obvious public importance, the condition of the public school system. "The central commitment of the First Amendment as summarized in the opinion of the Court in New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964), is that 'debate on public issues should be uninhibited, robust, and wide-open.'" Bond v. Floyd, 385 U.S. 116, 137. It is self-evident that the administration of the public schools is a matter of vital and abiding public interest.4/

Petitioner Watts' attempts to solicit three teachers to join in a move to oust the school superintendent is likewise protected by the First Amendment. The move was political in nature, being directed to the ouster of a public official, thus coming within the New York Times principle. Moreover, the solicitation of others to join a group with a lawful objective is encompassed

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4/ Of course, First Amendment protection of such discussion is not lost because it involves criticism of public officials. New York Times, supra; Garrison v. Louisiana, 379 U.S. 65; Rosenblatt v. Baer, 383 U.S. 75. It is said in the opinion of the Court below that petitioners' criticism was "false". While we disagree with this statement, it is without constitutional significance since the Court made no finding, and there is no evidence that petitioners knew the statements to be false or acted in reckless disregard of their truth. New York Times, supra, 376 U.S. at 279-280.

by the freedom of association which is guaranteed by the First Amendment. Thomas v. Collins, 323 U.S. 516.[5] If invitations to associate were unprotected the constitutional right could be cut off at the threshold.[6]

These constitutional premises were accepted by the Court below, but it nonetheless sustained the discharges on the theory that petitioners did not have a constitutional right to have their contracts renewed. But as the Supreme Court of California recently said in sustaining the right of public employees to engage in political activity, "Despite the antiquity of this argument, its reasoning today stands utterly discredited." Bagley v. Washington Township Hospital District, 55 Cal. Rptr. 401, 405, 421 P. 2d 409, 413. In Keyishian v. Board of Regents, 385 U.S. 589, this Court approved the Second Circuit's observation that "the theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected." 385 U.S. at 605-606. The Keyishian opinion cited numerous deicisions rejecting the theory on which the Court below proceeded in this case. 385 U.S. at 606. Cf. Garrity v. New Jersey, 385 U.S. 493.

5/ Elfbrandt v. Russell, 384 U.S. 11; NAACP v. Alabama, 377 U.S. 288; Gibson v. Florida Legislative Committee, 372 U.S. 539; NAACP v. Button, 371 U.S. 415; Louisiana v. NAACP, 366 U.S. 293; Shelton v. Tucker, 364 U.S. 479; Bates v. Little Rock, 361 U.S. 516; NAACP v. Alabama, 357 U.S. 449; Thomas v. Collins, 323 U.S. 516; DeJonge v. Oregon, 299 U.S. 353.

6/ As we have noted, p.7, n. 3, supra, the Court below characterized petitioners' move to oust the superintendent as "private" because it lacked the support of the majority of the Alaska Teachers Federation. Even if accurate, this observation is devoid of constitutional relevance. The majority principle, which federal labor laws have adopted as a condition for granting unions exclusive bargaining rights cannot limit or qualify individual or group rights to engage in political activity.

The scope of the limitations, if any, which may reasonably be imposed on a public employee's constitutional rights is a complex and delicate issue, more appropriately discussed in a brief on the merits than in a Petition for Certiorari. It suffices here to point out that the interests asserted below to justify the invasion of petitioners' constitutional rights are inadequate under any standard of reasonableness. To the extent that the Court relied on the tendency of the statements to bring the criticized superintendent and School Board into public disgrace or disrespect, its view is irreconcilable with this Court's decisions, which make clear that concern for the reputation of public officials may not be exalted above "the paramount public interest in a free flow of information to the people concerning public officials, their servants." Garrison v. Louisiana, 379 U.S. 65, 77. It is inherent, not only in the profound constitutional commitment to free debate on public issues, but also in the underlying democratic principle that government officials are ultimately accountable to the public, that these officials cannot constitutionally shield themselves from criticism by imposing vows of silence on their subordinates. Finally, any limitation on the constitutional rights of employees to be constitutionally supportable must be drawn in the narrowest possible terms to meet the precise, compelling public interest which it designed to accomplish. Neither the "immorality" statute, which was construed below to be a "catch-all," nor the Regulation, if it does more than describe the method of processing grievances, can qualify under this standard. Indeed, as we show below, so indiscriminate and sweeping is their reach that they are themselves unconstitutional.

2. The Statute on which Petitioners' Discharge was Based is Unconstitutionally Vague and Overbroad.

The foregoing considerations are, in our view, dispositive of this case. But additional important constitutional considerations are raised by the construction of the immorality clause of AS 14.20.170 and its application to effectuate petitioner's discharge.

As we have seen, the Court below held that the phrase "immorality" in the list of causes for which a teacher may be "non-retained" was expressly designed as a "catch-all". This Court once said, in another context, "A catch-all the phrase surely is, but this is not to define what it catches." Flora v. United States, 362 U.S. 145, 149. But the Court below has construed "immorality" to catch "all conduct from the commission of the most heinous felony down the scale of infamy to social misbehavior." (Op. p. 8). That construction of the statute is authoritative and binding here, even if a narrower interpretation would have protected it from constitutional challenge. Wieman v. Updegraff, 344 U.S. 183, 190; Kingsley Pictures Corp. v. Regents, 360 U.S. 684, 688; Cramp v. Board of Public Instruction, 368 U.S. 278, 285; NAACP v. Button, 371 U.S. 415, 431-432. And under that construction the statute is hopelessly vague and uncertain and denies the affected teachers due process of law. This would be true even if the statute did not touch upon First Amendment rights. "Social misbehavior" is plainly a concept so inherently vague "that men of common intelligence must necessarily guess at its meaning and differ as to its application". Connally v. General Construction Co., 269 U.S. 385, 391. But we need not pause on this point, for the statute must be assessed by the "stricter standards of permissible standards of statutory vagueness" applicable to a statute having a potentially inhibiting effect on speech.

Smith v. California, 361 U.S. 147, 151. For it is clear from this case that, as construed by the Court below it touches upon "the area of free expression." NAACP v. Button, 371 U.S. 415, 432. What was recently said in Keyishian v. Board of Regents, 385 U.S. 589, 603-604 is therefore directly in point and controlling:

> We emphasize once again that "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms," N.A.A.C.P. v. Button, 371 U.S. 415, 438; "[f]or standards of permissible statutory vagueness are strict in the area of free expression.... Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." Id., at 432-433. New York's complicated and intricate scheme plainly violates that standard. When one must guess what conduct or utterance may lose him his position, one necessarily will "steer far wider of the unlawful zone. . . ." Speiser v. Randall, 357 U.S. 513, 526. For "[t]he threat of sanctions may deter . . . almost as potently as the actual application of sanctions." N.A.A.C.P. v. Button, supra, at 433. The danger of that chilling effect upon the exercise of vital First Amendment rights must be guarded against by sensitive tools which clearly inform teachers what is being proscribed.

A statute may be held to be unconstitutionally vague, because of its potential impact on First Amendment freedoms, even without a demonstration that it has ever been applied against constitutionally protected conduct. But the Court below held that the "immorality" clause extends to Blue's speech which the Court acknowledged was constitutionally protected. The statute thus comes under the First Amendment's bar against "overbreadth." The principle is firmly established that even a legitimate and substantial legislative purpose" cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." Shelton v. Tucker, 364 U.S. 479, 488.7/

7/ See also, e.g. Lovell v. Griffin, 303 U.S. 444; Cantwell v. Connecticut, 310 U.S. 296; Elfbrandt v. Russell, 384 U.S. 11; Keyishian v. Board of Regents, 385 U.S. 589.

This principle has remained unquestioned despite disagreements within the Court as to whether the particular statute under consideration should be deemed overbroad. But there can be no doubt about a statute which has been authoritatively construed to extend its prohibitions to First Amendment rights.[8/]

8/ Seward School Board Regulation E(7) also suffers from the constitutional defect of overbreadth, having been construed to prohibit circulation of the Open Letter. As interpreted below, the Regulation is a striking example of how a perfectly reasonable purpose -- an orderly procedure for processing teacher grievances -- can be expanded to destroy constitutional rights, ironically those of the very teachers whom the grievance procedure is designed to protect. Indeed, so grotesque is the transformation of its innocuous language, that the Regulation presents a substantial due process issue on grounds of vagueness. Cf. Bouie v. City of Columbia, 378 U.S. 347, 354.

We have preserved our constitutional objections to Regulation E(7) as construed and to the procedures followed by the Court below in sustaining petitioners' discharge on the basis of that Regulation. P. 2, note, supra. But we do not wish to imply thereby that the Regulation could support the judgment below even in the absence of these constitutional infirmities. The threshold issue, as we see it, is whether disobedience to the Regulation is an adequate state ground for discharging petitioners for exercising their constitutional right to distribute the Open Letter to the public.

B. The Issues in This Case are of Recurring and National Importance.

When this case was first here, we urged that its implications far transcended the fates of these two petitioners or even of all teachers in the State of Alaska. Subsequent developments have confirmed this expectation. The issue of the rights of public employees to engage in political activity has now been before the highest courts of three of our most populous states. The Supreme Court of Illinois by a 5 to 2 vote[9] and the Court of Appeals of New York by a 4 to 3 vote[10] have, in agreement with the Court below, sustained the discharge of public employees for their exercise of these rights. However, the Supreme Court of California has decided to the contrary in a series of decisions.[11] As stated by that Court, the controlling principles are:

> The public employee surely enjoys the status of a person protected by constitutional right. Public employment does not deprive him of constitutional protection. In the absence of an imperative necessity to protect the public from irresponsible activity of so serious a nature that it would disrupt the public welfare, such

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9/ Pickering v. Board of Education, 36 Ill. 2d 568, 225 N.W. 2d 1.

10/ Puentes v. Board of Education, 18 N.Y. 2d 906, 276 N.Y. Supp. 2d 638, 223 N.E. 2d 45. The majority and minority of the Court of Appeals wrote no opinions, their decision affirmed an unreported 3 to 2 decision of the Supreme Court, Appellate Div., First Dept.

11/ Fort v. Civil Service Commission, 61 Cal. 2d 331, 38 Cal. Rptr. 625, 392 P. 2d 385; Bagley v. Washington Township Hospital District, 55 Cal. Rptr. 401, 421 P. 2d 409 and Rosenfield v. Malcolm, 55 Cal. Rptr. 505, 421 P. 2d 697.

protections are not subject to destruction by a public employer's insistence that they be waived by contract.[12]

These state court decisions not only reflect opposed constitutional philosophies but also evidence sharp disagreements as to the meaning of this Court's precedents. Taken together, they demonstrate a pressing and immediate need for reaffirmation by this Court of the right of public employees and, particularly, teachers, to exercise their First Amendment rights, free of the fear of discharge, even if that exercise should meet with the disfavor of their employers. The present case, like Pickering and Puentes, is of particular significance because the public employees involved are school teachers. As this Court recently reaffirmed:

> Our nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. Keyishian v. Board of Regents, 385 U.S. 589 at 603.

That freedom would be sorely crippled if teachers were forbidden from commenting on and criticizing the operation of the school system itself. As Mr. Justice Schaefer said, dissenting in the Pickering case:

> Teachers are not necessarily the best critics in matters of school finance and administration, but they are in closer contact with the actual operation of the schools than anyone else, and the public should not be deprived of their views.[13]

See also the dissenting opinion of Justice Rabinowitz in the Court below at pp. 32-33.

12/ Bagley v. Washington Township Hospital District, supra, 55 Cal. Rptr. at 407, 421 P. 2d at 415.

13/ Pickering v. Board of Education, supra, 36 Ill. 2d at 584, 225 N.E. 2d at 10.

The issues raised by the use of broad and vague statutes and regulations to effectuate the discharge of public employees, while perhaps not of equal importance, are closely related. Moreover, the Court below pointed to the statutes of many of the states which, like Alaska, consider "immorality" to be a proper ground for the dismissal of teachers. Even though the Alaska Court's construction of this language was unusually broad and obviously unconstitutional, a ruling to that effect would be a useful guide to courts in other jurisdictions. Moreover, such a decision here would have the salutary effect of depriving similar language in such statutes of its in terrorem effect on teachers in other states.

CONCLUSION

The Supreme Court of California has aptly defined the compelling public interests which are affected by the issues raised in this case and which strongly justify the grant of certiorari:

> In summary we note that the expansion of government enterprise with its ever-increasing number of employees marks this area of the law a crucial one. As the number of persons employed by government and governmentally-assisted institutions continues to grow the necessity of preserving for them the maximum practicable right to participate in the political life of the republic grows with it. Restrictions on public employees which, in some or all of their applications, advance no compelling public interest commensurate with the waiver of constitutional rights which they require imperil the continued operation of our institutions of representative government. Bagley v. Washington Township Hospital District, 55 Cal. Rptr. at 409, 421 P. 2d at 417.

Respectfully submitted,

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July, 1967.

APPENDIX A

CONSTITUTION, STATUTE AND REGULATIONS INVOLVED

United States Constitution:

Amendment I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statute:

AS 14.20.170, prior to amendment by S.L.A.1966 chapter 104:

> Definition of cause [for non-retention of teachers]. The term "cause" as used in section I above (37-5-11 herein) shall be based solely upon: (a) Incompetency which is defined as the inability or the unintentional or intentional failure to perform one's legitimate duties in a satisfactory manner; or (b) Immorality which is defined as conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect; or (c) Substantial non-compliance with the school laws of the Territory or such regulations of the Territorial Board of Education or any other governmental agency as are applicable or of the employing school district; except, that any necessary reduction of staff occasioned by a decrease in school attendance of the district may warrant, in the absence of any of the above reasons, the non-retention of a teacher.

Regulations:

Seward School Board Regulation E(7):

> Grievances, complaints and communications from employees shall be submitted to the Board through the Superintendent. Any employee or group of employees may at any time appeal to the Board.

Seward School Board Regulation E(9):

Employees or groups of employees desiring to address the Board shall address their communication to the Superintendent and not to individual members of the Board, except that copies of any communication may be sent to all Board members.

APPENDIX B

JUDGMENT

THE SUPREME COURT OF THE STATE OF ALASKA

JAMES A. WATTS and WALTER B. BLUE, Appellants, v. SEWARD SCHOOL BOARD and BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, Appellees.	File No. 427

This matter was considered by the court on remand from the Supreme Court of the United States for reconsideration in the light of Alaska statutes enacted subsequent to this Court's original decision.

It is ORDERED:

1. That the Seward School Board's conclusion that appellants were guilty of substantial non-compliance with Board Regulation E(7) is affirmed as a separate and independent cause for their nonretention.

2. That the Seward School Board's original conclusion that appellants were guilty of immorality within the meaning of the statute as it then defined that term, for their part in compiling, reproducing and distributing the Open Letter containing false statements disparaging of the Superintendent, is affirmed as a cause for their nonretention.

Supreme Court of Alaska

Filed and entered
December 7, 1966
J. M. McPhetree, Clerk

MANDATE

THE SUPREME COURT OF THE STATE OF ALASKA

JAMES A. WATTS and WALTER B. BLUE,

Appellants,

v.

SEWARD SCHOOL BOARD and BOARD OF EDUCATION, APPEAL HEARING COMMITTEE,

Appellees.

File No. 427

To: Superior Court of the State of Alaska,
Third Judicial District, at Anchorage

James A. Watts and Walter B. Blue filed an appeal from a judgment of the Superior Court of the State of Alaska (Third Judicial District) in Civil Action No. 61-728 entitled James A. Watts and Walter B. Blue, Petitioners v. Seward School Board and Board of Education, Appeal Hearing Committee, Respondents. The case was heard by this court of April 20, 1964. On September 21, 1964 this court entered its written opinion and entered judgment affirming the judgment of the superior court. Appellants filed a petition for a writ of certiorari in the Supreme Court of the United States. The petition was granted on May 3, 1965 and the September 21, 1964 judgment was vacated and the case remanded to this court. On December 7, 1966 this court entered its written opinion and entered judgment affirming in part and setting aside in part certain conclusions of the Seward School Board. Appellants' petition for rehearing was denied on February 2, 1967.

It is ORDERED:

1. That the Seward School Board's conclusion that appellants were guilty of substantial noncompliance with Board Regulation E(7), is affirmed as a separate and independent cause for their nonretention.

2. That the Seward School Board's original conclusion that appellants were guilty of immorality within the meaning of the statute as it then defined that term, for their part in compiling, reproducing and distributing the Open Letter containing false statements disparaging of the Superintendent is affirmed as a cause for their nonretention.

3. That the Seward School Board's conclusion that appellant Watts was guilty of immorality, as it was then defined by statute, for his activities in soliciting teachers to join in a private move to oust the Superintendent is affirmed as a cause for his nonretention.

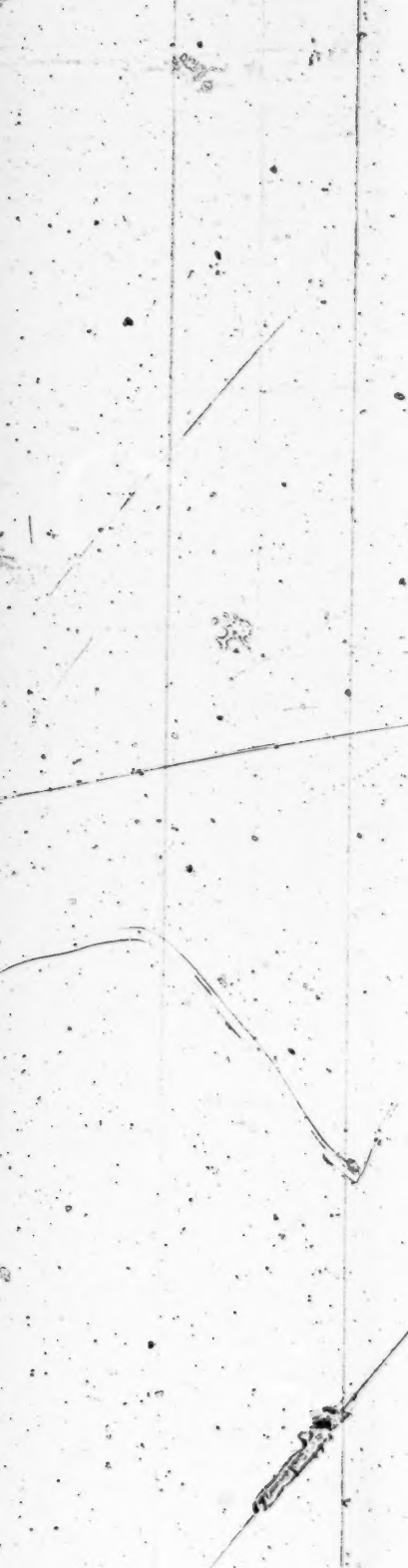
4. That the Seward School Board's conclusion that appellant Blue's speech to the longshoremen's union constituted immorality, as it was then defined by statute, is set aside for not being supported by substantial evidence.

5. Appellees shall recover from appellants costs and attorney's fees as shown below:

Costs and Attorney's Fees

Duplicating appellees' brief.....$70.00
Attorney's fees.....$300.00

WITNESS the Honorable Buell A. Nesbett, Chief Justice of the Supreme Court, State of Alaska, this 10th day of February, 1967.



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IN THE

Supreme Court of the United States

October Term, 1967

No. 325

JAMES A. WATTS AND WALTER B. BLUE, *Petitioners*,

v.

SEWARD SCHOOL BOARD AND BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, *Respondents*.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ALASKA

THE DECISION OF THE SUPREME COURT OF ALASKA RESTS ON AN ADEQUATE NON-FEDERAL GROUND.

Petitioners' teaching contracts were not renewed because, among other reasons, they substantially failed to comply with Seward School Board Regulation E(7). That regulation states:

> Grievances, complaints and communications from employees shall be submitted to the Board through the Superintendent. Any employee, or group of employees, may at any time appeal to the Board.

Petitioners violated this regulation by participating in the preparation and simultaneous distribution of an open letter to the Superintendent of the Seward School

Board, members of the Seward School Board, and members of the general public. *Watts v. Seward School Bd.*, 421 P.2d 586,601 (Alaska 1966). The open letter contained many grievances and complaints, none of which, with one possible exception, had previously been communicated to the Superintendent. 421 P.2d at 586. The Supreme Court of Alaska noted that the regulation required that grievances "should be submitted to the Board through the Superintendent. It provided a right of appeal from the Superintendent to the Board." 421 P.2d at 601. And in sustaining the Seward School Board's conclusion that that petitioners were guilty of substantial noncompliance with Board Regulation E(7) the Supreme Court of Alaska noted that not only had a substantial violation of the regulation taken place, but the purpose of the regulation, supplying an orderly process for deciding grievances, had been subverted by petitioners' conduct:

> The factual basis for the charges could have been verified by appellants if they had taken the time to do so. Appellants admittedly ignored established democratic procedure for obtaining redress. Instead, they attempted to arouse and inflame the public against the Superintendent and the School Board on charges which were largely untrue. They choose to attempt to substitute the mass meeting for the orderly process of hearing and appeal.

421 P.2d at 607.

Since the interpretation of state statutes and state administrative regulations is the function of state authorities, judicial and administrative[1], the decision of the Supreme Court of Alaska conclusively establishes that the petitioners' conduct was in violation of Seward School Board Regulation E(7).

A need for regulations which define and govern grievance procedure is not unique to the Seward School system, but is universally recognized as essential to

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1 Albertson v. Millard, 345 U.S. 242 (1963); Cramp v. Board of Pub. Instruction, 368 U.S. 278 (1961).

orderly school administration. Even in the absence of a specific statute or regulation, an Illinois court has said:

> There can be no doubt that if a teacher is aware of a censorable infraction of interscholastic athletic regulations by his school he should seek to correct it. However, promotion of the best interest of his school dictates that he would first call it to the attention of the coaches and of his principal or superintendent of his school, and, failing action there, call it to the attention of the Board of Education, and then, if necessary, make a formal protest or report to the proper officials of the Illinois State High School Athletic Association.

Jepsen v. Board of Educ., 19 Ill. App. 2d 204, 153 N.E.2d 417, 420 (1958). In *Jepsen* the failure of a teacher to follow orderly channels in processing his grievance was held to be sufficient cause for his dismissal even in the absence of a regulation setting forth the specific procedure to be followed.

The Petitioners do not contend that regulation E(7) was unreasonable or outside the School Board's scope of authority. Nor have they contested the fact that their open letter of May 18, 1959, to members of the Seward School Board and to the general public was in direct violation of the policy and outlined procedure of regulation E(7).

It is a well established principle that this Court will decline to review state court judgments which rest on independent and adequate state grounds, even where these judgments also decide Federal questions. *Henry v. Mississippi*, 379 U.S. 443, 446 (1965), *Wolfe v. North Carolina*, 364 U.S. 177 (1960). It is respectfully submitted that under the circumstances of this case there is an independent and sufficient state ground for the decision and that the decision therefore should not be disturbed.

THE QUESTION PRESENTED BY PETITIONERS IS OF ISOLATED SIGNIFICANCE.

Petitioners non-retention as teachers was based in part on conduct which was found to be immoral under the definition of that term contained in A.C.L.A. §37-5-12(b) (Cum. Supp. 1957). "Immorality" is there defined as "Conduct of the person attempting to bring the individual concerned or the teaching profession in public disgrace or disrespect". In 1962 this definition along with other previously existing non-retention provisions, was recodified as AS 14.20.170(a) which in 1962 read as follows:

> Dismissal. (a) A teacher, including a teacher who has acquired tenure rights, may be dismissed at any time for the following causes:
>
> Definition for cause: Causes for non-retention are
>
> (1) incompetency, which is defined as the inability or the unintentional or intentional failure to perform one's legitimate duties in a satisfactory manner;
>
> (2) immorality, which is defined as conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect;
>
> (3) substantial noncompliance with the school laws of the state or the regulations of the department or the applicable regulations of any other governmental agency or the employing school district.

In 1966 the Alaska Legislature enacted SLA 1966, ch. 104, §2 which amended 14.20.170(a)(2) and redefined immorality as "the commission of an act which, under the laws of the state, constitutes a crime involving moral turpitude." Of course, the result of this amendment is to remove from future cases the constitutional questions raised by petitioners.

In *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70 (1955), after a writ of certiorari had been granted to review an alleged denial of constitutional rights and after full argument on the merits, it was brought to the attention of the Court that since the commencement of

the litigation a statute had been enacted by the Iowa Legislature which precluded similar questions from ever arising again in the State of Iowa. The Court for this reason vacated its earlier decision on the merits and dismissed the writ of certiorari as being improvidently granted.

In the case at bar the statute of which petitioners complain has been changed. Just as in *Rice*, the case will never arise again and is of limited public significance. *Cf. District of Columbia v. Sweeney*, 301 U.S. 361 (1940).

THE DECISION OF THE SUPREME COURT OF ALASKA IS NOT IN CONFLICT WITH THE DECISIONS OF THIS COURT

The Supreme Court of Alaska did not base its decision on the abstract proposition that public employment is a privilege not a right, nor on the theory that the power to withhold employment entirely includes the power arbitrarily to place conditions on employment when granted. Instead, the court held that the Seward School Board was justified in not renewing petitioners' contracts because their activities brought them and the teaching profession into public disgrace and undermined the morale and discipline of the local school system. Petitioners' discharge was sustained because of the specific finding that their activities threatened to impair the efficiency and integrity of the school system. This is an interest recognized by this Court in *United Public Workers of America v. Mitchell*, 330 U.S. 75 (1947) as justifying restrictions on the otherwise constitutionally guaranteed rights of speech and association of government employees " 'within reasonable limits,' even though the regulation trenches to some extent upon unfettered political action." 330 U.S. at 102. Even the state cases which petitioners assert to reflect constitutional philosophy antithetical to that of the Supreme Court of Alaska, have recognized the compelling interest of state agencies in preserving an efficient, harmonious internal administration. E.g., *Fort v. Civil Serv. Comm'n*, 61 Cal. 2d 331, 38 Cal. Rptr. 625, 392 P.2d 385, 389 (1964), where the Court stated:

> A strong case, we think, can also be made for the view that permitting a public employee to run or campaign against his own superior has so disruptive an effect on the public service as to warrant restriction.

In the case at bar there can be no doubt of the divisiveness of petitioners' conduct.[2] Since petitioners do not dispute the conclusion of the school board that they engaged in activities damaging to their own and to their employer's professional prestige, it can only be assumed that they are arguing that in spite of their disruptive conduct which threatened to impair the efficiency and destroy the integrity of the school system, they cannot be denied employment within the school. This claim is without merit.

Moreover, petitioners' false statements for which they were dismissed are not entitled to constitutional protection since they were made with reckless disregard for truth. The Supreme Court of Alaska stated:

> The production and distribution of the Open Letter was a time-consuming and deliberate act. The false statements contained in it were not made in heated debate. The factual basis for the charges could have been verified by appellants if they had taken the time to do so.

421 P.2d at 607. Those are the elements of recklessness which, as noted by the Supreme Court of Alaska, renders a statement beyond constitutional protection. *Cf. Garrison v. Louisiana*, 379 U.S. 64, 75 (1964).

Nor is the statute under which petitioners were non-retained unconstitutionally vague or overbroad. The

---

[2] *E. g.* In an attempt to discredit the superintendent, petitioner Blue in May or June of 1959 contacted and questioned at least three residents of the town where the superintendent had previously served concerning his character, administrative policies and personal habits while serving there. 421 P.2d at 599.

phrase, "conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect" was intended to be a "catch-all", serving the same purpose as phrases such as "conduct unbecoming a teacher" or "unprofessional conduct". 421 P.2d at 590. These phrases do cover a broad range of conduct; necessarily so because no statute could be framed to include with specificity all of the particular acts which might render a teacher unfit. The necessity of using a broad standard for dismissal is indicated by the fact that this technique is used in many states and by the Federal Civil Service.[3]

In attacking the constitutionality of such a technique, petitioner has misunderstood the fundamental difference between statutes which impose prior conditions on employment (oaths) or which prohibit specific activities (a county charter as cited in *Fort* case)[4] and statutes authorizing dismissal for cause with the right of a hearing. All of the cases petitioner cites deal with either prior conditions or specific acts that are prohibited. The constitutional defect in laws such as the county charter in the *Fort* case is plain. Specified kinds of political activity are prohibited; any hearing the employee gets

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3 5 U.S.C. §652 (a) (1965) reads:

> No person in the classified civil service of the United States shall be removed or suspended without pay therefrom except for such cause as will promote the efficiency of such service. . . .

See statutes cited in Beilan v. Board of Educ., 357 U.S. 399, 406 n.8 (1958) and accompanying text.

4 No officer or employee of the county in the classified civil service shall directly or indirectly make, solicit, or receive or be in any manner concerned in making, soliciting or receiving any assessment, subscription, or contribution for any political party or any poltiical purpose whatsoever.

Fort v. Civil Serv. Comm'n, 61 Cal. 2d 331, 38 Cal. Rptr. 625, 392 P.2d 385, 386 (1964).

is only to see if he engaged in the prohibited activity. There is no judicial determination that his particular activity actually interfered with the internal functioning of the agency. Similarly, the requirements of an oath that an employee has never been a member of a political party is too broad and at times vague because, again the only question the employee can litigate is whether he signed the oath, or whether he was a member of a group. He has no chance to show that his membersip was innocent or that he personally did or does not share the illegal aims of the group. In such laws, the legislature has made the judgment that anyone who engages in the activity or fails to sign the oath, regardless of the actual circumstances, is unfit for public employment. This legislative judgment is what courts review when striking down the laws for vagueness or overbreadth. These laws must be drawn narrowly to assume that anyone who does engage in the activity will be actually unfit.

It is clear that when a hearing is granted under a "catch-all" phrase the question to be determined is unfitness in fact. In a dismissal hearing for "good cause" a court rather than determining whether the employee did any specific act which may or may not bear relationship to his ability to serve effectively must determine that the employee's actions render him unfit. In "dismissal for cause" cases the legislature has not made any judgment that a particular act renders an employee unfit. The legislature instead has entrusted agencies and courts with the task of finding whether a particular employee's actions constitute good cause for dismissal. This is a very specific procedure.

In the few cases where such a dismissal procedure has been attacked for vagueness or overbreadth it has been upheld.

In *Board of Educ. v. Swan*, 41 Cal. 2d 546, 261 P.2d 261, 266 (1953), *cert. denied*, 347 U.S. 937 (1954) the Court rejected an attack on the standard "unprofessional conduct" as being void for vagueness, with the following statement:

As was said in the Goldsmith case, 66 Cal. App. at page 168, 225 P. at page 787: '. . . the calling (of a teacher) is so intimate, its duties so delicate, the things in which a teacher might prove unworthy or would fail are so numerous, that they are incapable of enumeration in any legislative enactment . . . the teacher is entrusted with the custody of children and their high preparation for useful life. His habits, his speech, his good name, his cleanliness, the wisdom and propriety of his unofficial utterances, his associations, all are involved. His ability to inspire children and to govern them, his power as a teacher, and the character for which he stands are matters of major concern in a teacher's selection and retention. How can all these things be provided for and offenses against them be particularly specified in a single statute?

The question of vagueness, appears to be governed by *Beilan v. Board of Educ.*, 357 U.S. 399 (1958). In that case a teacher was dismissed under the disqualifying ground of "incompetency." His offending conduct was refusing to answer questions propounded by his superior in private concerning his possible association with communist groups. The teacher's contention that due process of law was violated by including his refusal to answer within the term "incompetency" was rejected by the Court. The Court mentioned that the Pennsylvania statute under which he had been dismissed, "unlike those of many other States, contains no catch-all phrase, such as 'conduct unbecoming a teacher,' to cover disqualifying conduct not included within the more specific provisions." 357 U.S. at 406. By inference then, it would have been constitutionally permissable to have dismissed the teacher under a catch-all standard. The Court proceeded to note that the term "incompetency" had been broadly interpreted by the Pennsylvania Court and that its dictionary definition was not particularly prescriptive. Since this was so, the Court held, the extension of the term "incompetency" to include the teacher's refusal to answer was not inconsistent with the United States Constitution.

The basic teaching of *Beilan* and *Swan* is that statutes setting forth all possible legitimate grounds for non-retention of teachers cannot be drafted. Because of this fact the use of general standards in non-retention statutes is constitutionally permissible.

CONCLUSION

For the foregoing reasons respondent prays that the petition for certiorari be denied.

Respectfully submitted

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BURR, BONEY & PEASE
825 W. Eighth Avenue
Anchorage, Alaska

Attorneys for Respondent, Seward School Board

Dated: August 2, 1967

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 325

JAMES A. WATTS AND WALTER B. BLUE, *Petitioners*,

v.

SEWARD SCHOOL BOARD AND BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, *Respondents*.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALASKA

OPINIONS BELOW

The original opinion of the Supreme Court of Alaska is reported at 395 P. 2d 372 and reprinted at App. pp. 34-40.[1] The opinion of the Supreme Court of Alaska on remand from this Court is reported at 421 P. 2d 586, and reprinted at App. pp. 47-119. The opinion denying

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[1] "App." refers to the Joint Appendix filed by the parties in this Court; "R." refers to cited portions of the record which were not printed.

a petition for rehearing is reported at 423 P. 2d 678 and reprinted at App. pp. 122-125.

JURISDICTION

The judgment of the Supreme Court of Alaska was entered on December 7, 1966, and a timely petition for rehearing was denied February 2, 1967. On May 8, 1967, Mr. Justice Douglas filed an order extending the time for filing this petition to July 3, 1967. The petition for Certiorari was granted on October 9, 1967. This Court has jurisdiction under 28 U.S.C. § 1257 (3).

QUESTIONS PRESENTED

1. May public school teachers be discharged for the exercise of their First Amendment rights of association and criticism of public officials?

2. Is AS 14.20.170, which authorized the discharge of school teachers for "immorality", and was construed by the Alaska Supreme Court to be a "catch-all" extending to "social misbehavior" and to include the exercise of First Amendment rights, unconstitutionally vague and overbroad?

3. Did the Supreme Court of Alaska deny petitioners their rights under the First and Fourteenth Amendments by relying on School Board Regulation E(7) to sustain their discharge?

CONSTITUTION, STATUTE AND REGULATIONS INVOLVED

This case involves the First and Fourteenth Amendments to the United States Constitution, AS 14.20.170 prior to amendment by S.L.A. 1966 chapter 104, and Seward School Board Regulations E(7) and E(9). They are reprinted in Appendix C, *infra*.

STATEMENT OF THE CASE

INTRODUCTION

In March 1960, petitioner James A. Watts had taught in the public schools in Seward, Alaska, for eight years; petitioner Walter B. Blue had taught there for fifteen years. They then received from respondent Seward School Board notices of nonretention (i.e., discharge), stating the grounds therefor as required by the state teacher tenure law (App. C, *infra*). Both petitioners were charged with circulating to the public an Open Letter to the School Board, which was critical of the Board and the School Superintendent; and with subsequently circulating a petition for an election to recall the members of the School Board. Watts was charged also with soliciting teachers to join a group whose purpose was to oust the school superintendent; Blue was charged also with making a speech to the Longshoremen's Union in an attempt to obtain support for the recall election. The School Board ultimately found against petitioners on each of the grounds stated, but these determinations were in part reversed by the state courts, as a result of proceedings detailed below. As the case comes here, the discharge of both petitioners has been sustained because they circulated the Open Letter, and Watts' discharge has been sustained for the additional ground that he asked two members of the faculty "if they would go along with a group of which Watts was a representative and whose purpose was to oust * * * the superintendent of schools."[2] It is petitioners' contention that their dis-

[2] Petitioner Watts denied that this was the substance of the conversation. See pp. 6-7, *infra*. Because we believe that Watts' discharge is unconstitutional even if respondents' view of the facts is accepted, we shall not develop at length our objection to this finding, although we preserve it for the Court's consideration in the event it is deemed to affect the constitutional result. See, e.g., *New York Times* v. *Sullivan*, 376 U.S. 254, 285; *Napue* v. *Illinois*, 360 U.S. 264, 272; *Niemotko* v. *Maryland*, 340 U.S. 268, 272.

charge on these grounds violates their rights under the First and Fourteenth Amendments. Petitioners urge additionally that the statute and school board regulation which were the basis for their discharge are, as construed below, unconstitutionally vague and overbroad.

A. The Circumstances Leading to Petitioners' Discharge.

This case arises out of a controversy in the Seward, Alaska school system which began in the fall of 1958. Soon after the school term began, a teacher, Mr. Conder, was provoked into resigning when George Fabricius, the new School Superintendent, forbade him from riding the school bus to work. (App. pp. 393-396). As a result of Conder's loss of his job, repeated statements by the Superintendent that he would have to get rid of many of the teachers (App. pp. 354-355, 372, 393, 500-501; R. pp. 64, 236), and numerous other incidents which were perhaps minor in themselves (see e.g., App. pp. 237-239, 369-373, 439-448, 488-489; R. 59-60, 236-237), there grew up among the faculty considerable tension and fear that their jobs and homes in Seward were in jeopardy.[3]

In March four teachers (not the present petitioners) received notices of nonretention. The Grievance Committee of the Seward District Teachers Association (SDTA) sent a letter simultaneously to the Superintendent and the School Board asserting that these discharges were illegal and requesting a meeting with the Board to discuss them. Such a meeting was held on March 31, and the School Board, though admitting

[3] As it turned out, of the eighteen teachers in the Seward school system who owned homes at the beginning of the 1958 school year, only five were still teachers in November 1960. (App. p. 446).

that they had not complied with the law, objected that the Association was trying to hold the Board up with a technicality, and refused to reconsider its decision. The SDTA then communicated with its parent organization in Washington, the National Education Association (NEA). The NEA confirmed the view that the School Board's action was illegal and urged that the case of the four teachers be vigorously pursued. On this basis the executive board of the SDTA wrote another letter to the respondent school board urging that the four teachers' contracts be renewed according to law. The School Board did not respond, nor did it renew the contracts. (App. pp. 226-228, 385-386.)[4]

A meeting was scheduled by the SDTA of all its membership for the evening of April 28, to discuss what further steps, if any, should be taken with regard

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[4] Mr. Walton: I see. And what transpired at that meeting?

Mr. Watts: We discussed the non-retention of the teachers who had made their appeal for their contracts, the School Board stated that they did not want these teachers and they were not willing to return their contracts.

Mr. Walton: Do you recall anything in particular which any of the board members or Mr. Fabricius said on that occasion?

Mr. Watts: Yes—I remember that Mrs. Whitmore said words to this effect, that if the School Board was forced to give these contracts to these teachers that it would be very easy to fire them at a later date. It was very simple to overstaff then in the fall dismiss the extra teachers which would be the teachers they wanted to fire. At that time Mr. Fabricius stated, said Yes it's very easy to dismiss any undesirable teacher we have on our staff and all we have to do is to check if a teacher is a minute late in the mornings, fails to get a report in exactly on time or is out of the room without permission, it constitutes substantial non-compliance with the regulations.

Mr. Walton: When Mrs. Whitmore so spoke, did she appear to have the concurrence of the other Board members present?

Mr. Watts: I heard no disagreement. (App. pp. 227-228.)

to the contracts of the four teachers. That morning a conversation took place between petitioner Watts and Mr. and Mrs. Benjamin Frampton, the principal and a teacher in the elementary school, which is one of the grounds assigned for Watts' discharge. Watts testified that on the previous evening the executive committee of the SDTA had asked him to speak to the Framptons (whom he had known for many years) to get their support for the meeting that night to continue the efforts to get the contracts back for the teachers. According to petitioner, Mrs. Frampton stated that she and her husband were in strong agreement with the Superintendent's policies and that they would not go along with Watts; Mr. Frampton concurred with her. (App. pp. 203-204.)

However, the Framptons testified otherwise. Mr. Frampton said:

> I went with Mr. Watts down to Mrs. Frampton's room and there he stated that he had been sent as representative of the group, and because he had been a friend of ours for a long time. He wanted to know if we would go along with a movement to oust Mr. Fabricius. He stated that we knew the certification of teachers is not the real issue. He said that he knew I was in the middle and didn't want me to get hurt. He said that they were quite sure they could get Mr. Fabricius and wanted to know if we would go along with them. We told him at that time that we could see no reason why anyone should try to get Mr. Fabricius and we considered he was doing all right and would have to take a stand [with] Mr. Fabricius and the school board. Then we asked Mr. Watts what group was going along with him. Then he said under the circumstances he would rather not say. I believe that ended the conversation. (App. p. 147.)

This was confirmed by Mrs. Frampton. Watts denied that he had solicited the Framptons for the purpose of joining a group to oust the Superintendent.[5]

The School Board accepted the Frampton's version, and the court below ultimately affirmed this finding on the ground that it was supported by substantial evidence. (App. p. 68.)[6] There was no evidence and no finding that Watts ever communicated the substance of this conversation to any other persons.

The SDTA meeting was held that evening as scheduled. The membership voted 12-11 against taking any further action in support of the four teachers who had been illegally non-retained. Within three or four days efforts were started to affiliate with the American Federation of Teachers (AFL-CIO) and eighteen members of the SDTA joined the AFT. (App. pp. 233-234.) At the meeting of the School Board, which was attended by many citizens of Seward, the AFT was represented by an attorney, who spoke at length, and succeeded in having the Board reverse its prior decision, and renew the contracts of the four non-retained teachers. At the close of the meeting, counsel for the AFT asked the Board to meet with the AFT in order that the other grievances which had arisen between the teachers and the administration could be discussed privately. This

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[5] Mr. Walton: Would there have been any reason at that time for you to say such words as they have repeated to you, such as "we are going to get the Superintendent" or words to that effect?
Mr. Watts: There would have been absolutely no reason to because all we were concerned about at this time was getting the teachers' contracts. (App. p. 231).

[6] The School Board also found that Watts made similar overtures to a teacher named Richardson, but as there was absolutely no evidence to support such a finding, the court below did not rely on it in affirming Watts' discharge. (App. p. 68, n. 24).

request was ignored. (App. pp. 437-439). Shortly thereafter two other teachers lost their jobs. A Mr. Smith was demoted and Mr. Swick, one of the leaders in the AFT group,[7] was advised that his position had been declared vacant. (App. pp. 262, 437).

The AFT's counsel again attempted unsuccessfully to arrange a meeting with the School Board. Then Mr. Blue communicated with Mr. Howell, then the President of the School Board, who agreed to a meeting between the teachers and the Board on May 16th. When the time came, however, only Mr. Howell appeared, and explained that the Board had decided not to meet until they had an attorney. (App. pp. 197-198, 400-401.) As a direct result of the failure of that meeting, the AFT voted to distribute an Open Letter to the Public to inform it of the difficulties which had arisen and to obtain an immediate public meeting with the School Board. Its full text is reprinted as Appendix A to this Brief. For their part in its preparation and circulation, petitioners were discharged from their positions as public school teachers.

In a letter addressed to the President of the AFT, the President of the School Board scheduled a meeting for May 26, which was subsequently held on May 28. There were present members of the School Board, Superintendent Fabricius and Mr. Watts, as Secretary of the AFT.

The AFT considered the meeting to be a failure because, in Watts' words,

> ... after almost two hours of tape recording of this meeting at the very end and when it was quite

[7] During his testimony Fabricius referred to Blue, Watts and Swick as the "troublesome trio". (App. p. 293).

> obvious that we were not going to make any headway, just about the time the tape ran out, Mr. McRae said to me, he said, Jimmy you and all the rest of your trouble makers ought to resign and get out so we can organize a good school. Then, someone noticed that the tape recorder had evidently run out of tape and there was a little discussion over that and I was waiting to be dismissed and Mr. Fabricius stated "Watts you and all the rest of your union members ought to have your throats cut." (App. p. 246)

Watts then reported back to the executive committee of the AFT, and the next day the AFT started a petition for an election to recall the School Board. (App. p. 246.) A sufficient number of names was obtained but the City Council failed to direct an election. Petitioner Blue brought suit to require that the election be held and prevailed in the Supreme Court of Alaska. *Blue* v. *Stockton,* 355 P. 2d 395. In the course of the campaign Blue made a speech to the Longshoremen which was subsequently the basis of charges against him. (See App. p. 68). Two members of the School Board also participated actively. The election was held on October 4, 1960. With approximately 600 citizens voting, 60% of the vote was in favor of the School Board and the recall movement was defeated.

When petitioner Blue was asked why he participated in the actions which resulted in his removal, he testified as follows:

> In my function as a teacher of Social Studies, I have the responsibility of teaching such things as freedom of speech, freedom of in general, the American tradition of democracy. As a matter of fact, in becoming involved in the whole teacher's controversy, this underlay the entire motivation for my involving myself at all. If I am to teach

these things to students, I believe it is my obligation to practice what I preach, if I possibly can. Ordinarily I have not become involved in controversies, but when I saw the four non-retained teachers abandoned, without respect to their rights, as I understood it, this was back in the Seward District Teachers Association, I had to make a decision about moral responsibility. Should I shrug my shoulders, laugh it off, well it didn't affect me personally. Or did I have an obligation to do what I thought was necessary to help protect fellow members of the profession. So I had to make a decision, like it or not. The reason I made this decision was not to please myself, because I don't enjoy controversies. I have not enjoyed this controversy. But how can I teach these values to my students, assuming that I am able to do so, if I refuse to shoulder the responsibility or if my fellow teachers, or my fellow union members refuse to shoulder such responsibility when it is thrust upon us. I believe that young people when they see a teacher whom they often may tend to set up as a pattern, suddenly not acting according to the way they think you should go, then you lose your teaching effectiveness, and as a result, you can't do the job best that you're supposed to do. So I felt that I owed this to the teaching profession generally. I thought that we as AFT members, and SDTA members owed this to the teaching profession generally, to try to correct the things that were going on in our school which we did not think were in the democratic tradition. (App. 456-457.)

B. The Proceedings on Petitioners' Nonretention.

1. The Proceedings within the Alaska School System.

As stated at the outset, petitioners were served with notices of nonretention in March, 1960. Petitioners were entitled to and received a hearing before the School Board on April 8, 1960. Four days later the School Board issued its decision without findings,

affirming its decision to discharge petitioners. Petitioners then appealed to respondent State Board of Education, as authorized by law. On July 1, 1960, the Appeals Hearing Committee of the State Board, after holding an oral hearing at which counsel appeared, reversed the School Board and remanded the proceeding for a new hearing because the School Board had failed to make findings of fact or state its conclusions.

Thereupon the School Board held four days of hearings,[8] from November 4 to November 12, 1960. It entered its decision on March 1, 1961, reaffirming petitioners' discharge. The findings and conclusions of the School Board which relate to the charges which remain in the case are set forth in Appendix B to this Brief. To summarize, the School Board concluded as follows: 1) both teachers had engaged in immoral conduct under the tenure statute by circulating the Open Letter; 2) both teachers had engaged in immoral conduct by circulating the recall petition; 3) Blue had engaged in immoral conduct by his speech to the union; 4) Watts had engaged in immoral conduct by his conversations with the Framptons and Richardson, in which the Board found he had solicited them to join with him and others in an effort to oust the Superintendent; 5) both teachers had violated School Board regulation E-7 by circulating the Open Letter, because they had not brought it to the attention first of the Superintendent and then of the School Board before making it public.

Petitioners appealed again to the State Board of Education. The Board affirmed the School Board's action, stating, "Since after mature consideration of

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[8] References to the record in this Brief are to the transcript of that hearing, which consists of two volumes in the certified record.

these records and arguments we do not feel that the original decision of the School Board was unsupported by substantial evidence, we are constrained to agree with the Board's decision." (App. p. 9.)

2. The First Petition for Review.

Petitioners then filed a petition for writ of review in the State Superior Court, Third Judicial District, under Rule 111 of the Alaska Rules of Civil Procedure, praying that the decision of the State Board of Education be held for naught and the teachers reinstated, or a new hearing directed. (App. pp. 1-13.) In a "Mandate" which issued on December 28, 1961, Judge James M. Fitzgerald granted review, and vacated the decision of the State Board. (App. pp. 15-19.) He ruled as a matter of law that neither circulation of the Open Letter, nor circulation of the recall petition were "immoral" conduct under the tenure statute. The Judge ruled further that because the State Board had not entered findings, he could not determine: 1) whether the Board had rested its decision in part on the premise that these activities constituted immoral conduct; 2) whether the State Board had rested its decision in part on the School Board's conclusion that there had been substantial noncompliance with Rule E-7; and 3) which of the School Board's findings were deemed by the State Board to have been supported by substantial evidence. He therefore remanded the case to the State Board of Education, Appeal Committee with directions "to make specific findings of fact and enter concrete conclusions," and authorized the State Board to augment the record if it so chose.

3. The Further State Board Proceedings.

The State Board of Education did not render its decision on remand until July 31, 1962.[9] (App. pp. 20-26.) It stated that School Board Findings 19-22 and 26-28 (Appendix B, *infra*), were supported by substantial evidence. It held that Watts was guilty of "immoral" conduct within the meaning of the tenure statute "when he engaged in conferences with the Framptons and Richardson urging them to join in the circulation of an Open Letter and the conduct of a recall election against the School Board of Seward." (App. p. 21)[10] It held that petitioner Blue was guilty of "immoral" conduct when he made his speech to the Longshoremen's Union. The State Board also held that both petitioners were guilty of substantial non-compliance with School Board Regulation E-7 by circulating the Open Letter. Although counsel for the School Board conceded that it did not have any minutes reflecting the adoption of Regulation E-7 by the School Board, the State Board held, solely on the basis of an affidavit by the School Board's members (Ex. 13), that it was adopted and put into effect "at least prior to January 1, 1959."

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[9] Because of this delay, the Superior Court issued an Order Requiring the State Board to report to the Court (Jan. 31, 1962), which was not complied with, and an Order to Show Cause why petitioners should not be reinstated (July 3, 1962). The State Board's decision was rendered two weeks before the return date directed by that Order.

[10] This finding differed from that of the School Board, which had not found that either the Open Letter or the recall petition was discussed in these conversations. It is undisputed that neither the Open Letter nor the recall petition was even contemplated by the AFT group at the time of Watts' April 28 conversation with the Framptons.

4. The First Decision of the Supreme Court of Alaska.

Petitioners filed a second petition for writ of review in Superior Court. This petition was denied on September 13, 1963, without opinion or findings by Judge Hubert A. Gilbert. (App. p. 32.) Petitioners then appealed to the Supreme Court of Alaska. On September 21, 1964, the Supreme Court unanimously affirmed the judgment of the Superior Court. (*Watts* v. *Seward School Board,* 395 P. 2d 372; App. pp. 34-40.) The Court held that petitioners were guilty of "immoral" conduct: Watts by his conversations with other teachers, and Blue by his speech to the Longshoremen's Union. The Court found it unnecessary to decide whether circulation of the Open Letter constituted noncompliance with Regulation E-7. The Court also declined to consider petitioners' contention that their discharge was unconstitutional. (App. pp. 39-40.)

5. The First Decision of this Court.

Petitioners then filed a Petition for a Writ of Certiorari in this Court, urging that petitioners' discharge violated their rights under the First Amendment. On May 3, 1965, this Court granted certiorari, vacated the judgment of the Alaska Supreme Court and remanded the case for reconsideration in light of changes in Alaska laws pertaining to teachers which had been enacted while the Petition was pending. (*Watts* v. *Seward School Board,* 381 U.S. 126; App. pp. 42-43.)

6. The Second Decision of the Supreme Court of Alaska.

On remand, further briefs were filed by the parties, and oral argument was held in October, 1965. While the case was under advisement, the Court directed that the record be supplemented by the transcripts of the various proceedings within the school system and the

exhibits received at those hearings (see App. p. 51). On December 7, 1965, the Court below reaffirmed its original decision by a 2-1 vote.

The Court construed the "immorality" provision of the tenure statute to be a "catch-all" (App. pp. 52, 53, 79), proscribing "any and all conduct of the teacher which tends to bring disgrace or disrespect upon the teacher or the teaching profession. This definition would include all conduct from the commission of the most heinous felony down the scale of infamy to social misbehavior." (App. p. 53)[11] The Court found that Blue's speech to the Longshoremen and Watts' conversation with the Framptons fitted into this definition. (App. pp. 67-71.) The Court also ruled—although no party had argued—that circulation of the Open Letter was "immoral" conduct within the meaning of the statute. (App. pp. 65-66)[12] In this connection the Court approved as "supported by substantial evidence" the finding of the School Board that some of the statements in the Open Letter were "false," and commented also that the proposals contained therein were "high-handed." (App. p. 66) The Court held that distribution of the Open Letter was a ground for nonretention of petitioners for the additional ground that it violated School Board Regulation E-7.

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[11] The Court held that the amendment of that definition by the Legislature, and the other intervening changes in state law, would not be applied retroactively to this case. (App. pp. 75-83).

[12] There had been no indication in the first opinion of the Alaska Supreme Court that it still considered that issue, which had been decided against respondents by Judge Fitzgerald in the first review proceeding, to have remained in the case. The dissenting Justice in the Supreme Court protested strongly against the reopening of this issue. (App. pp. 92-98.)

Turning its attention to the constitutional issues, the Court held that petitioners' discharge for circulating the Open Letter, and Watts' discharge for his conversation with the Framptons were not prohibited by the First and Fourteenth Amendments. The Court said that petitioners had a constitutional right to engage in these activities, but that they had no constitutional right to have their contracts renewed after they had done so. (App. pp. 84-86.) But with respect to Blue's speech, which it also had held to be grounds for discharge under the "immorality" provision, the Court said that "the constitutional question becomes a close one," which it resolved in Blue's favor. (App. pp. 86-87.)

The Court thus sustained both petitioners' discharge for circulating the Open Letter, both because it was "immoral" conduct, and because it violated Regulation E-7. It sustained Watts' discharge on the additional ground that his solicitation of the Framptons was "immoral" conduct.

Mr. Justice Rabinowitz filed an opinion concurring in the reversal of the charge based on Blue's speech, but dissenting from the remainder of the Court's judgment and opinion. (App. pp. 92-119.) While respectfully inviting attention to his entire opinion because of the light it sheds on that of the majority, and particularly to his discussion of the free speech issue, we shall confine our quotation to his conclusion:

> One of the most important functions of this court is to assure that constitutional rights are vindicated. By today's decision the right to free speech in this state has sustained a serious encroachment. Apparently the principle that free speech encompasses "uninhibited," "robust," and "wide-open"

debate on public issues has been shunted aside. In its place has been substituted a holding that cannot fail to curtail discussion among those most intimately concerned with this state's educational system. (App. p. 119.)

A timely petition for rehearing was denied.

SUMMARY OF ARGUMENT

I.

The Open Letter which Petitioners circulated to the public, which was critical of the School Board and the School Superintendent, was protected by the First and Fourteenth Amendments under the principle that "debate on public issues should be uninhibited, robust, and wide-open," *New York Times* v. *Sullivan*, 376 U.S. 254, 270. Petitioner Watts' alleged request to two teachers that they join a group in an effort to oust the School Superintendent was likewise protected, for "it is now beyond dispute that freedom of association for the purpose of advancing ideas and airing grievances is protected by the Due Process Clause of the Fourteenth Amendment from invasion by the States." *Bates* v. *Little Rock*, 361 U.S. 516, 523. Plainly, association for political activity, including a campaign to oust a public official by peaceful means, is of the essence of that freedom as well as the logical consequence, in a democratic society, of the right to criticize public officials. Indeed, invitations to associate for this purpose must be deemed to be protected; for if they were not, this constitutional right would be cut off at the threshold.

The Court below agreed that petitioners were engaged in constitutionally protected activity, but held that they could nevertheless be discharged from their positions as teachers because of it. In this that Court

erred. The discharge of a public employee for exercising his First Amendment rights is at least as likely to induce "self-censorship" as the civil and criminal remedies for libel of public officials which were sharply circumscribed in *New York Times, supra,* and *Garrison* v. *Louisiana,* 379 U.S. 64. To view the issue simply as one which relates to the contractual relationship between the public employee and his employer, the government, is to miss the central meaning of the First Amendment—that free and full debate on public issues benefits not only the speaker, but the entire society. Moreover, the "contract" theory of the Court below is but a variant of the doctrine, now thoroughly discredited, that a public employee can be required to sacrifice either his job or his constitutional liberties.

The immorality provision, broadly construed by the Supreme Court of Alaska, plainly does not qualify as legislation "narrowly drawn to define and punish specific conduct as constituting a clear and present danger of interest to the State." *Cantwell* v. *Connecticut,* 310 U.S. 296, 311. Nor do any of the grounds stated for bringing this case under the "immorality" statute present the compelling state interest which alone would justify the encroachment on petitioners' liberty of free association. See *Bates* v. *Little Rock, supra.*

While the Court below found some of the statements in the Open Letter to be false (which petitioners deny), the record clearly shows that petitioners believed that the statements were true and that they did not act recklessly. *New York Times* and the cases following it squarely hold that truth cannot be the test of whether criticism of government officials is constitutionally protected. Nor can circulation of the Open Letter or Watts' solicitation of the Framptons justify

their discharge on the theory that it brought either them or the teaching profession into disrespect. To hold that a teacher brings disrespect upon himself by criticizing the administration of the schools, overlooks the obligation of the citizen to engage in political activity; the latter contention smacks of the "libel on government" which was expressly disapproved in *New York Times*. Nor can the view of the Court below that the Open Letter was "high-handed" justify its decision; the First Amendment does not make courts, any more than other organs of government, the ultimate arbiters of political discussion.

Respondents' position is not furthered by their contention that petitioners violated a School Board regulation which required them before publishing the Open Letter to present their criticisms to the School Superintendent and then to the School Board. It is utterly incompatible with a Constitution whereunder, as Madison said, "the censorial power is in the people over the Government, and not in the Government over the people", to permit public officials to shield their stewardship from criticism by imposing on their subordinates vows of silence to be observed on pain of discharge. For they then displace "the power of reason as applied through public discussion" with "silence coerced by law—the argument of force in its worst form," Brandeis, J., concurring in *Whitney* v. *California*, 274 U.S. 357, 376.

It is argued here that petitioners' discharge was required to maintain the "morale and discipline" of the school system. While cases may arise in which these considerations would justify the infringement of First Amendment rights of public employees, this is not one of them. We submit that the appropriate test is

whether the conduct sought to be punished constitutes "a substantive evil actually designed to impede" the performance of the School Board's functions. This is the standard which has been applied in reviewing convictions for contempt of court where an exercise of First Amendment rights was claimed to impede the administration of justice, *e.g. Wood* v. *Georgia,* 370 U.S. 375, 389. There is at least as great an interest in the unobstructed administration of justice, as there is in the efficiency of the public service; similarly, even as "the administration of the law is not the problem of the judge or prosecuting attorney alone, but necessitates the cooperation of an enlightened public," *id.* at 391, administration of the other branches of government is not the exclusive domain of the administrators. *Wood* v. *Georgia* teaches also that this Court will examine for itself whether the facts of the individual case require the subordination of First Amendment rights to the interests of administration. The record here does not show, and indeed the Court below did not find, that petitioners' conduct actually interfered with the operations of the school system. Thus respondents have failed to meet the burden of showing that the rigorous standards of the First Amendment have been met.

This case is a far cry from *United Public Workers* v. *Mitchell,* 330 U.S. 75, which sustained the constitutionality of Section 9(a) of the Hatch Act. That section reaches only partisan political activity, and expressly permits activities of the nature engaged in by the present petitioners. Moreover, in *Mitchell* the Court relied heavily on a Congressional judgment which was based on a conscious regard for the political rights of civil servants. This is in sharp contrast to

the statute and regulation relied on by respondents here, which were not even designed specifically to deal with this subject, and which therefore do not come to this Court "encased in the armor wrought by prior legislative deliberation," *Bridges* v. *California,* 314 U.S. 252, 261; *Wood* v. *Georgia, supra,* 370 U.S. at 385. There is no occasion, therefore, to consider whether *Mitchell* should be followed in a case in which its holding is relevant.

II.

The Court below authoritatively construed "immorality" to be a "catch-all" which includes "all conduct from the commission of the most heinous felony down the scale of infamy to social misbehavior." That construction of the statute is authoritative and binding here, even if a narrower interpretation would have protected it from constitutional challenge. *NAACP* v. *Button,* 371 U.S. 415, 431-432. And under that construction the statute is hopelessly vague and uncertain and denies the affected teachers due process of law. This would be true even if the statute did not touch upon First Amendment rights. "Social misbehavior" is plainly a concept so inherently vague "that men of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally* v. *General Construction Co.,* 269 U.S. 385, 391. But the statute must be assessed by the "stricter standards of permissible statutory vagueness" applicable to a statute having a potentially inhibiting effect on speech. *Smith* v. *California,* 361 U.S. 147, 151. For it is clear from this case that, as construed by the Court below, it touches upon "the area of free expression." *NAACP* v. *Button,* 371 U.S. 415, 432. What was recently said

in *Keyishian* v. *Board of Regents,* 385 U.S. 589, 603-604 is therefore directly in point and controlling:

> We emphasize once again that "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms," *N.A.A.C.P.* v. *Button,* 371 U.S. 415, 438; [f]or standards of permissible statutory vagueness are strict in the area of free expression. . . . Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *Id.,* at 432-433.

The immorality provision, as construed below, suffers also from unconstitutional overbreadth, i.e., it unnecessarily impinges upon protected First Amendment freedoms. *Shelton* v. *Tucker,* 364 U.S. 479, 488; *United States* v. *Robel,* 389 U.S. 258. That the immorality statute extends its prohibitions to constitutionally protected conduct is clear from the opinion below. It was therein held that Blue's speech to the Longshoremen was "immorality" within the meaning of the statute. The speech was plainly protected by the First Amendment, see e.g., *Stromberg* v. *California,* 283 U.S. 359, 369, as the Court below acknowledged. A statute which has been expressly construed to prohibit conduct protected by the First Amendment may not stand.

Regulation E-7 as construed below is also unconstitutionally vague. On its face it simply states a procedure which teachers must follow in presenting their grievances to the School Board. It makes no reference to political activity, or to any other communications by teachers to the public. It therefore gives no warning to the teacher that he risks discharge if he communicates with the public without previously proceeding through the channels prescribed by the regulation. The regulation fails to give fair notice, also, because it

appears to be inconsistent with another regulation which prescribes a different procedure for communicating with the School Board. The author of these regulations, the School Superintendent, was unable to reconcile them. In these circumstances, the regulation must be held to be unconstitutionally vague, most particularly so under the strict standards applicable because of its impact on First Amendment rights.

The regulation is likewise unconstitutional for overbreadth. It makes no exceptions. It requires *all* teachers to process *all* criticisms of the school administration through the School Superintendent and the School Board before making them public. Compare *Shelton* v. *Tucker*, 364 U.S. at 487-490. And since regulation E-7 applies only to grievances, it inhibits one side of the discussion of school issues while allowing those teachers who would speak favorably of the school administration unlimited access to the public. The First Amendment does not permit such preference for public officials over their critics. See *New York Times* v. *Sullivan*, 376 U.S. at 282.

ARGUMENT

I. THE DISCHARGE OF PETITIONERS FOR POLITICAL ACTIVITY VIOLATED THEIR RIGHTS OF FREE SPEECH AND ASSEMBLY UNDER THE FIRST AND FOURTEENTH AMENDMENTS.

The First and Fourteenth Amendments embody "a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open, and that it may include vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials." *New York Times* v. *Sullivan*, 376 U.S. 254, 270.

This Court has reaffirmed that commitment in a variety of contexts, e.g., *Garrison* v. *Louisiana*, 379 U.S.

64; *Bond* v. *Floyd,* 385 U.S. 116; *Time, Inc.* v. *Hill,* 385 U.S. 374; *Keyishian* v. *Board of Regents,* 385 U.S. 589. The right to criticize public officials and government is, as was recognized in *New York Times,* essential to preserve free discussion of public affairs, a basic objective of the First Amendment. Thus, when petitioners circulated the Open Letter, critical of the administration of the school system by the School Board and its superintendent, they were engaging in a fundamental constitutional right. What this Court said recently in *Mills* v. *Alabama,* 384 U.S. 214, fits their case precisely:

> Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes. The Constitution specifically selected the press, which includes not only newspapers, books, and magazines, but also humble leaflets and circulars, see *Lovell* v. *City of Griffin,* 303 U.S. 444, to play an important role in the discussion of public affairs. Thus the press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve. Suppression of the right of the press to praise or criticize governmental agents and to clamor and contend for or against change, which is all that this editorial did, muzzles one of the very agencies the Framers of our Constitution thoughtfully and deliberately selected to improve our society and keep it free. (*Id.* at 218-219.)

The same principle preserved Watts' right to criticize the School Superintendent in his conversation with the Framptons, and in urging them to join with Watts and others "in a move to oust the Superintendent." For "it is now beyond dispute that freedom of association for the purpose of advancing ideas and airing grievances is protected by the Due Process Clause of the Fourteenth Amendment from invasion by the States. *De Jonge* v. *State of Oregon,* 299 U.S. 353, 364, *N.A.A.C.P.* v. *State of Alabama,* 357 U.S. 449, 460," *Bates* v. *Little Rock,* 361 U.S. 516, 523. Plainly, association for political activity, including a campaign to oust a public official by peaceful means, is the essence of that freedom, as well as the logical consequence, in a democratic society, of the right to criticize public officials.[13] If invitations to associate for this purpose were unprotected, the constitutional right could be cut off at the threshold.[14]

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[13] In *De Jonge, supra,* Mr. Chief Justice Hughes held for a unanimous Court, "The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government." 299 U.S. at 365.

[14] The Court below characterized petitioner's "move to oust the Superintendent" as "private" because it lacked the support of the majority of the Alaska Teachers Federation. (See App. p. 70). Even if accurate, this observation is devoid of constitutional relevance. Nothing could be more subversive of the ultimate objective of the right of free association to allow peaceful change, see *De Jonge* v. *Oregon, supra,* than a constitutional rule that only the *majority* may freely engage in political activity.

These principles are by now so well established that we need not elaborate them further, particularly since the court below acknowledged that petitioners were engaged in constitutionally protected activity. It recognized that under *New York Times* and *Garrison* petitioners could not be mulcted for civil damages or imprisoned, but held nonetheless that the same conduct subjected them to nonretention, on the theory that petitioners did not have a constitutional right to have their contracts renewed. (App. pp. 84-86.)

This reasoning ignores the governing consideration of the *Times* and *Garrison* decisions—that civil and criminal sanctions would, unless sharply circumscribed, inhibit that discussion of public affairs which is the mainstay of our political system. The loss of public employment is equally likely to raise "the pall of fear and timidity [which] imposed upon those who would give voice to public criticism [creates] an atmosphere in which the First Amendment freedoms cannot survive." 376 U.S. at 278. An individual who must support himself and his family is, if anything, more vulnerable to a threat to his employment than a business is to a money judgment. Moreover, a teacher discharged for criticism of public officials can expect to find serious difficulty in obtaining new employment since prospective new employers may regard him as a potential troublemaker. Cf. *Greene* v. *McElroy,* 360 U.S. 474, 486-487.[15] Indeed, the court below has in-

[15] This was by no means only a theoretical possibility for the teachers in Seward. Superintendent Fabricius told one former teacher, Mr. Brown, that "school teachers that come out of this system and appl[y] to another school, there will be a little list on the administrator's desk, listing these teachers coming from Seward," referring to the teachers in the union. (R. 64). After Mr. Swick's contract was not renewed, Fabricius volunteered a

vited all the teachers in Alaska to engage in "self-censorship" by a pointed admonition in its first opinion.[16]

The argument is not enhanced by phrasing it in terms of the employee's contractual obligation to his employer, the government. "Self-censorship" by public employees deprives the public of the benefits of their views no less when it is based on a contractual obligation, than when it is based on the command of statute. The great freedoms of the First Amendment are not for the benefit of those who exercise them "so much as for the benefit of all of us," see *Time, Inc.* v. *Hill*, 385 U.S. 374, 389.

Moreover, even if the focus is entirely on the public employee himself, it can no longer be maintained that because he has no constitutional right to his job, he may be deprived of it because he has exercised a constitutional right. As the Supreme Court of California

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letter to the school board in another town where Swick had sought employment, advising them to investigate Swick's activities in other schools before employing him. Fabricius explained his reasons as follows:

"Mr. Walton: Now why did you do that?

Mr. Fabricius: Because I felt that if a teacher in a system was giving that system trouble then any other systems should make their investigation on it and not get in the same fix.

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Mr. Walton: And do you do that by virtue of any regulations, sir, adopted by this School Board?

Mr. Fabricius: Oh, no." (App. pp. 346-347).

[16] "However, for the guidance of those in the teaching profession we suggest that it will be in the best interests of the school children, the teachers and the economy generally for teachers with grivances to follow an orderly procedure of seeking redress first at the superintendent level and then at the school board level." (App. p. 39).

recently said in sustaining the right of public employees to engage in political activity, "Despite the antiquity of this argument, its reasoning today stands utterly discredited." *Bagley* v. *Washington Township Hospital District,* 55 Cal. Rptr. 401, 405, 421 P. 2d 409, 413.[17] In *Keyishian* v. *Board of Regents,* 385 U.S. 589, this Court approved the Second Circuit's observation at an earlier stage of the case that "the theory that public employment which may be denied altogether may be subjected to any conditions, regardless of how unreasonable, has been uniformly rejected." 385 U.S. at 605-606, quoting 345 F. 2d 236, 239. See also *Cramp* v. *Board of Public Instruction,* 368 U.S. 278; *Wieman* v. *Updegraff,* 344 U.S. 183; *Torcaso* v. *Watkins,* 367 U.S. 488.[18]

If the right to criticize public officials and to associate for the purpose of ousting them peacefully were absolute, there would be no need for further argument. But this Court has declined to hold that these rights

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[17] The Court also said: "The public employee surely enjoys the status of a person protected by constitutional right. Public employment does not deprive him of constitutional protection. In the absence of an imperative necessity to protect the public from irresponsible activity of so serious a nature that it would disrupt the public welfare, such protections are not subject to destruction by a public employer's insistence that they be waived by contract." 55 *id.* at 407, 421 *id.* at 415.

[18] The "contract" analysis is without merit for a further reason. The power of a state, or a school board, to enter into contracts derives ultimately from the same source, and is subject to the same constitutional limitations, as other manifestations of its authority, cf. *Cooper* v. *Aaron,* 358 U.S. 1, 4; *Burton* v. *Wilmington Parking Authority,* 365 U.S. 715, 725. Surely, the requirement that all teachers reveal all their associations, struck down in *Shelton* v. *Tucker,* 364 U.S. 479, would have fared no better if it had been embodied in the individual contracts between the teachers and the school boards in that state.

are totally protected from interference or regulation.[19] And so the Court must "appraise the substantiality of the reasons advanced in support of" the discharge of both petitioners for circulating the Open Letter and of Watts for assertedly asking other teachers to join a group seeking to oust the superintendent. See *Schneider* v. *State,* 308 U.S. 147, 161. The applicable criterion is that stated in *Bates* v. *Little Rock, supra:* "Where there is a significant encroachment upon personal liberty, the State may prevail only upon showing a subordinating interest which is compelling." 361 U.S. at 524.

Since legislation narrowly drawn to prevent the supposed evil would weigh heavily in this Court, see *Cantwell* v. *Connecticut,* 310 U.S. 296, 307-308, it is appropriate first to consider the statutory basis of the judgment below. The tenure statute allows discharge of teachers for: a) "Incompetency," b) "Immorality" —defined as "conduct tending to bring the individual concerned or the teaching profession into public disgrace or disrespect" and c) "Substantial noncompliance with the school laws of the [State] [20] or regulations of the [State] Board of Education." (App. p. 51.) Since the Court below ruled that both activities which are involved here come within (b), it will be convenient to discuss that provision first. The Court construed that section as follows:

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[19] For example, even in *New York Times,* a majority of the Court held that a suit for civil damages would still lie if the defamed public official were able to establish that the criticism was a deliberate falsehood or that the defendant acted in reckless disregard of the truth. Cf. *Curtis Publishing Co.* v. *Butts,* 388 U.S. 130.

[20] The statute was originally passed when Alaska was a Territory and its language as set forth in the Court's opinion reflects this.

> "Immorality," on the other hand, is broad and covers any and all conduct of the teacher which tends to bring disgrace or disrespect upon the teacher or the teaching profession. This definition would include all conduct from the commission of the most heinous felony down the scale of infamy to social misbehavior. The point in a teacher's conduct beyond which his behavior would tend to bring disgrace or disrespect upon him or his profession, would be one of degree depending upon the rules of society and to some extent upon the mores of the particular community. (App. pp. 51-52.)

While this construction casts grave doubt on the constitutionality of the statute itself, see point II, *infra*, it suffices for present purposes to observe that it is plainly not "narrowly drawn to define and punish specific conduct as constituting a clear and present danger of interest to the State." *Cantwell, supra,* 310 U.S. at 311. Nor do any of the grounds stated for bringing this case under the "immorality" statute present the compelling state interest which alone would justify the encroachment on petitioners' liberty of free association. See *Bates* v. *Little Rock, supra.*

The school board found that some of the statements in the Open Letter were "'false" and the court below accepted that finding and relied heavily on it. We disagree with that assessment; but even if it is permitted to stand, it cannot support the judgment below. The *New York Times* decision expressly disapproved of "truth" as a test for the constitutional protection of criticism of public officials. Such criticism loses its constitutionally protected character only if it was made "with knowledge that it was false or with reckless disregard of whether it was false or not." 376 U.S. at 279-280. The evidence conclusively demon-

strates that both petitioners earnestly believed the truth of the statements in the Open Letter and that they cannot be charged with recklessness in its publication.[21]

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[21] Petitioner Blue testified as follows on examination by counsel for the School Board:

"Mr. Burr: Is it your feeling and your position at this time Mr. Blue that each and every item of the ten items on Exhibit 7 are true in every respect.

Mr. Blue: To the extent that the people working on them conscientiously were able to state the truth, yes.

Mr. Burr: As president of, and a presiding member at the meeting that approved this document, exhibit 7, did you not have an opportunity to voice disapproval of these items if you had any question of their authenticity?

Mr. Blue: Yes sir, I did.

Mr. Burr: Did you make any objections to anyone of them?

Mr. Blue: No sir, I did not.

Mr. Burr: And by that do you mean that you subscribed to the accuracy of each and every item on this document?

Mr. Blue: Yes sir, within limits of ordinary human frailty, yes.

Mr. Burr: Are you stating by that or do you mean this board to understand by that that there is some question in your mind as to whether or not the ten items are wholly accurate?

Mr. Blue: There is no question in my mind about any of them.

Mr. Burr: Do you believe them to be true?

Mr. Blue: I do sir.

Mr. Burr: In every respect?

Mr. Blue: Yes sir, within the limits of human frailty." (App. p. 190).

Petitioner Watts testified as follows:

"Mr. Burr: Mr. Watts, you have indicated knowledge of Exhibit 7 which is the open letter to the Seward School Board which has items 1 through 10 were true in every respect at the time you distributed this letter to the public?

Mr. Watts: To the best of my knowledge, I believe every one of them were true at that time.

Mr. Burr: Had you thoroughly and exhaustively investigated yourself, or your group, to satisfy yourself beyond any reasonable doubt that each of these items were true?

Mr. Watts: I had investigated many of them and others I had complete confidence in the statements from many sources on the others." (App. p. 219).

The view of the court below that petitioners were subject to discharge because their publication of the Open Letter and Watts' conversation with the Framptons had a tendency to bring them into public disgrace and disrespect is likewise constitutionally impermissible. The *New York Times* case recognized that it is as much the citizen's "duty to criticize as it is the official's duty to administer." 376 U.S. at 282. And the Court quoted with approval (*id.* at 270) the "classic formulation" in the concurring opinion of Mr. Justice Brandeis in *Whitney* v. *California*, 274 U.S. 357, 375-376:

> "Those who won our independence believed . . . that public discussion is a political duty; and that this should be a fundamental principle of the American government."

In short, "speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison* v. *Louisiana*, 379 U.S. 64, 74-75.[22]

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[22] To sustain Watts' discharge because his conversation with the Framptons may have led them to think less well of him, because they disagreed with him and rejected his invitation to join in the group effort to oust Superintendent Fabricious, would severely inhibit the right of free association. Even as a commentator on public subjects will often unwittingly speak falsely, so one who seeks to have others join him in a political association inevitably risks that some persons whom he solicits as members will disagree with his objectives and react with hostility to the invitation to join his group.

Moreover, to punish Watts because of the Framptons' reaction to his exercise of his political rights is akin to convicting a person who distributes leaflets because the persons who receive them throw them into the streets. Compare *Schneider* v. *State*, 308 U.S. 147.

Nor is it an adequate basis for the judgment below that the Open Letter casts the teaching profession into public disgrace or disrespect, if indeed it does. If this phrase is intended to refer to the teaching profession generally, it is but a thinly disguised version of the concept of "libel on government" which was squarely rejected in the *New York Times* case, 376 U.S. at 291-292. While all would agree that it is useful that the public think well of the teaching profession, it is equally true that the public should think well of the police force; but *New York Times* made clear that a general criticism of the police cannot constitutionally be forbidden. On the other hand, if "the teaching profession" refers to the Superintendent and the School Board who were criticized, the holding below directly contravenes the principle that concern for the reputation of public officials may not be exalted above "the paramount public interest in a free flow of information to the people concerning public officials, their servants." *Garrison* v. *Louisiana,* 379 U.S. at 77.

The Court below objected also that the Open Letter was "arbitrary" and "high-handed" (App. p. 66). But the ultimate function of the First Amendment is to withdraw from all branches of the government, including courts, the power to punish citizens for making proposals regarding the conduct of public office, even though these may be "high-handed," outrageous, destructive, or simply foolish. *Bond* v. *Floyd,* 385 U.S. 116, 132, 136. "For the Constitution protects expression and association without regard to * * * the truth, popularity, or social utility of the ideas and beliefs which are offered." *NAACP* v. *Button,* 371 U.S. 415, 444-445.

The alternate basis asserted for discharging petitioners is that they violated School Board regulation E-7 by circulating the Open Letter to the public without previously stating these criticisms first to the School Superintendent, and then to the School Board. There are several independent constitutional objections to this ruling, which are discussed in Part II, *infra*. But we shall treat here only with the question whether the governmental interest in petitioners' compliance with this regulation is sufficient to justify their discharge for exercising their First Amendment right to circulate the Open Letter.

We note at the outset that petitioners cannot be discharged for "disobedience" as such. In *Wright* v. *Georgia*, 373 U.S. 284, six young Negroes were convicted of breach of the peace for playing basketball. They had failed to heed the command of a police officer to stop playing, and the state argued that failure to obey the command of a police officer was a traditional breach of the peace. This Court unanimously rejected the argument: "Obviously, however, one cannot be punished for failing to obey the command of an officer if that command is itself violative of the Constitution." *Id.* at 291-292.

Police commands are surely entitled to respect at least as great as the directives of other agencies. The constitutional adequacy of this ground of discharge must therefore be judged in terms of the governmental interest embodied in the regulation itself, and the gravity of petitioners' breach. We submit that maintenance of a procedure for the processing of complaints against the School Board is truly inconsequential when compared with preservation of a free flow of information to the public regarding the administration of the school

system. The education of the young has been a dominant concern of civilized society from time immemorial. Under the scheme of Plato's *Republic*, control of education was delegated exclusively to the Guardians; but in a democracy it must ultimately be the responsibility of the people—as petitioners fully recognized. (App. pp. 222, 468-469, 485-487). It is utterly incompatible with a Constitution whereunder "the censorial power is in the people over the Government, and not in the Government over the people" [23] to permit public officials to shield their stewardship from criticism by imposing on their subordinates vows of silence to be observed on pain of discharge. For they then displace "the power of reason as applied through public discussion" with "silence coerced by law—the argument of force in its worst form," Brandeis, J., concurring in *Whitney* v. *California*, 274 U.S. 357, 376, quoted in *New York Times, supra*, 376 U.S. at 270. That is this case.

Respondents have argued [24] that the discharge of petitioners for their political activities is constitutional because they had "undermined the morale and discipline of the public school system." We readily acknowledge that the morale and discipline of the public service are among those interests which may require an accommodation between legislative power and individual exercise of First Amendment rights, see *United States* v. *Robel*, 389 U.S. 258, 268, n. 20. But surely, "morale and discipline" can no more "be invoked as a talismanic incantation to support any exercise" of

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[23] 4 Annals of Congress 934 (1794) quoted at 376 U.S. 275.

[24] Brief in Opposition to Petition for a Writ of Certiorari, No. 325, Oct. Term, 1967 (hereafter "Brief in Opp."), p. 5.

governmental power than "war power," *id.* at 263, "privilege," or "breach of contract." [25]

It is not necessary to speculate under what circumstances political liberties may properly be required to yield to the demands of "morale and discipline," for respondents have not shown that petitioners' conduct constituted "a substantive evil actually designed to impede" the performance of the School Board's functions. The quoted language is from *Wood* v. *Georgia*, 370 U.S. 375, 389, one of a series of cases in which an exercise of judicial contempt power to punish conduct which impedes the administration of justice was claimed to infringe First Amendment rights. In holding that public statements by a county sheriff to the press on a matter before the grand jury could not, under the circumstances of the case, constitutionally be punished, the Court said:

> Men are entitled to speak as they please on matters vital to them; errors in judgment or unsubstantiated opinions may be exposed, of course, but not through punishment for contempt for the expression. Under our system of government, counter-argument and education are the weapons available to expose these matters, not abridgement of the rights of free speech and assembly. Cf. Mr. Justice Brandeis, concurring in *Whitney* v. *California*, 274 U.S. 357, 378. Hence, in the absence of some other showing of a substantive evil actually designed to impede the course of justice in justification of the exercise of the contempt power to si-

[25] To allow a discharge in the name of "morale and discipline" without further inquiry into the impact on constitutionally protected rights would simply restore, under a new rubric, the discredited doctrine that the Constitution does not protect a public employee in his job.

lence the petitioner, his utterances are entitled to be protected. 370 U.S. at 389.[26]

The analogy between *Wood* and its antecedents, which involve the administration of justice, and cases like the present, wherein the claim is asserted that the rights of free speech and association may be curtailed in the interest of administration of the public service, is sound in logic and principle. "The right of courts to conduct their business in an untrammeled way," *id.* at 383, is at least as great as that of school boards. And even as "the administration of the law is not the problem of the judge or prosecuting attorney alone, but necessitates the cooperation of an enlightened public," *id.* at 391, so the administration of the public schools is not the exclusive domain of school boards, superintendents or teachers. In short, "morale and discipline" and other elements of administrative efficiency are subject to the same rigorous tests as the contempt power when they impinge upon rights protected by the First Amendment.

Another lesson of immediate relevance can be drawn from *Wood* v. *Georgia*. The Court was not content to rely on the conclusion of the Georgia courts that Wood's "conduct created a serious evil to the admin-

[26] The Court reviewed prior decisions dealing with this subject since *Bridges* v. *California*, 314 U.S. 252. That case adopted a "clear and present danger" standard, which was a "working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished." See 370 U.S. at 384. The *Wood* opinion also approved the language of *Craig* v. *Harney*, 331 U.S. 367: "The vehemence of the language used is not alone the measure of the power to punish for contempt. The fires which it kindles must constitute an imminent, not merely a likely threat to the administration of justice. The danger must not be remote or even probable; it must immediately imperil."

istration of justice." 370 U.S. at 386. Consistent with its "ultimate responsibility to define limits of state power regarding freedom of speech and expression," (*id.*), the Court carefully examined the record, and concluding that it failed to illustrate "the serious degree of harm to the administration of law necessary to justify exercise of the contempt power," (*id.* at 393), reversed the conviction. A like result is required here. While respondents argue that "Petitioners' discharge was sustained because of the specific finding that their activities threatened to impair the efficiency and integrity of the school system" (Brief in Opp. p. 5), the record does not substantiate their claim. The holding that petitioners were subject to discharge for violating regulation E-7 by circulating the Open Letter rested simply on the Court's construction of that regulation and its approval of the finding that it had not been obeyed. It nowhere suggests that this breach interfered with the operations of the school system—such an inquiry would have been irrelevant under the Court's approach that petitioners were subject to discharge because they had breached their agreement to abide by the regulations. Nor did the court make a specific finding of the sort claimed by respondents when it concluded that petitioners were guilty of immoral conduct by circulating the Open Letter or (as to Watts) when he spoke to the Framptons. We have set forth in the margin the Court's statements of its conclusions on these issues.[27] In both instances the critical determina-

[27] With respect to the Open Letter, the Court said: "The overall, abiding effect of the widespread circulation of the false statements and the high-handed method employed to seek redress in disregard of established procedures, could only result in a loss of respect by the public for appellants and the teaching profession in general when all of the facts became known and was immoral conduct

tion regarding the effect on the public's image of petitioners and the teaching profession is couched in the speculative form "could only." Moreover, the events which were supposed to trigger this public reaction —"when all of the facts became known" (App. pp. 66, 69)—were neither found, nor shown to have occurred.

A state may not penalize the exercise of First Amendment rights by resort to such speculations regarding possible interference with other state interests, no matter how legitimate. This is illustrated not only by *Wood* v. *Georgia,* but by the series of cases which have upheld the First Amendment right of individuals to associate for the purpose of assisting each other in the assertion of their legal rights, despite the contention that the methods which they had chosen would interfere with the administration of justice and lessen respect for it. *NAACP* v. *Button,* 371 U.S. 415; *Trainmen* v. *Virginia,* 377 U.S. 1; *Mine Workers* v. *Illinois State Bar,* 389 U.S. 217, particularly at 222-225.

The reasons asserted in support of petitioners' discharge are markedly less substantial than those which led a divided Court to sustain the constitutionality of Section 9(a) of the Hatch Act in *United Public Workers* v. *Mitchell,* 330 U.S. 75, relied on by respondents (Brief in Opp. p. 5). The political activities there proscribed were thought to "menace the integrity and the competency of the [public] service," *id.* at 103. More-

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within the meaning of that term as it was then defined by statute." (App. p. 66).

With respect to Watts' conversation with the Framptons, the Court said: "Appellant Watts' efforts, made during school hours on school premises, were degrading, unprofessional and detrimental to morale and discipline and could only result in loss of respect by the public for him and his profession when all of the facts became known." (App. p. 69).

over, the Court in *Mitchell* was careful to point out the limited scope of the Hatch Act provision:

> It is only partisan political activity that is interdicted. It is active participation in political management and political campaigns. Expressions, public or private, on public affairs, personalities and matters of public interest, not an objective of party action, are unrestricted by law so long as the government employee does not direct his activities toward party success. *Id.* at 100.

In the *Mitchell* case, the Court relied heavily on the legislative judgment regarding the efficiency of the public service and the fact that Congress acted in light of prior experience under a very similar regulation of the Civil Service Commission. Moreover, the legislative history demonstrated that both the Congress and President Roosevelt, who signed the bill into law, acted with conscious regard to the right of civil servants to engage in political activities. This is in sharp contrast to the immorality statute and regulation E-7, which, as we have already shown, are general enactments which were not designed specifically—if at all—to affect teachers' rights to engage in political activities. In short, unlike the Hatch Act, the judgment below does not come to this Court "encased in the armor wrought by prior legislative deliberation," *Bridges* v. *California,* 314 U.S. 252, 261; *Wood* v. *Georgia,* 370 U.S. 375, 385.[28] Consequently, there is no need to con-

[28] On the contrary, the Alaska legislature has expressly disapproved the construction of the "immorality" provision in this case: subsequent to the first decision of the Supreme Court of Alaska in this case, the legislature in 1965 enacted AS 14.20.095 providing that no rule or regulation of certain education officials may restrict or modify a teacher's right to comment and criticize public education officials, outside of school hours, to the same extent that a private individual might do so. Further, the tenure

sider herein whether *Mitchell* should be followed in a case in which its holding is relevant to the result.

II. THE STATUTE AND REGULATION ON WHICH PETITIONERS' DISCHARGE WAS BASED ARE UNCONSTITUTIONALLY VAGUE AND OVERBROAD.

The foregoing demonstrates, we submit, that petitioners' discharge violated the First Amendment, even if the "immorality" provision and regulation E-7 are not unconstitutional on their face. But as we show now, the judgment below must be reversed on the additional ground that the statute and the regulation both suffer from the related constitutional infirmities of vagueness and overbreadth. We turn first to the immorality provision of the tenure statute.

As we have seen, the Court below held that the phrase "immorality" in the list of causes for which a teacher may be "nonretained" was expressly designed as a "catch-all." This Court once said, in another context, "A catchall the phrase surely is; but this is not to define what it catches." *Flora* v. *United States*, 362 U.S. 145, 149. But the Court below has construed "immorality" to catch "all conduct from the commission of the most heinous felony down the scale of infamy to social misbehavior." (App. p. 52). That construction of the statute is authoritative and binding here, even if a narrower interpretation would have protected it from constitutional challenge. *Wieman* v. *Updegraff*, 344 U.S. 183, 190; *Kingsley Pictures Corp.* v. *Regents*, 360 U.S. 684, 688; *Cramp* v. *Board of Public Instruction*,

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statute was amended, effective July 14, 1966, and "immorality" was defined as the commission of a crime involving moral turpitude. As the court below points out, ". . . as a result of this amendment there is no longer a statutory cause for nonretention of a teacher for general misconduct not amounting to a crime involving moral turpitude." (App. p. 76, n. 31).

368 U.S. 278, 285; *NAACP* v. *Button*, 371 U.S. 415, 431-432. And under that construction the statute is hopelessly vague and uncertain and denies the affected teachers due process of law. This would be true even if the statute did not touch upon First Amendment rights. "Social misbehavior" is plainly a concept so inherently vague "that men of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally* v. *General Construction Co.*, 269 U.S. 385, 391.

Respondents point out (Brief in Opp. p. 7), that many states have teachers' tenure statutes which are broad in language and that this is necessary because no statute can spell out all possible forms of conduct which would be just cause for the discharge of a teacher. But this problem is not confined to tenure laws, but affects the drafting of legislation generally. To tolerate all forms of indefinite commands because greater precision is difficult, would entail scrapping the void-for-vagueness doctrine. Moreover, no other state seems to have found it necessary to adopt the sweeping formulation adopted below, which includes "all conduct from the commission of the most heinous felony down the scale of infamy to social misbehavior." (App. p. 52) Nor do any of the decisions cited below similarly exact "obedience to a rule or standard * * * so vague and indefinite as to really be no rule or standard at all," *Small Co.* v. *Amer. Sgr. Refining Co.*, 267 U.S. 233, 239.[29]

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[29] *Beilan* v. *Board of Education*, 357 U.S. 399, relied on by respondents, does not shield the immorality statute from constitutional attack. No issue of vagueness was raised by petitioner in this Court. Moreover, neither in *Beilan* nor in its other decisions cited by the Court below, has the Pennsylvania Supreme Court given to its statute the same sweeping interpretation as the Alaska Supreme Court adopted in this case.

It is, moreover, of the utmost relevance that the immorality provision has been construed by the court below to "catch" the exercise of First Amendment rights. This means that it must be assessed by the "stricter standards of permissible statutory vagueness" applicable to a statute having a potentially inhibiting effect on speech, press and association. *Smith* v. *California,* 361 U.S. 147, 151. For it is clear from this case that, as construed by the Court below it touches upon "the area of free expression." *NAACP* v. *Button,* 371 U.S. 415, 432. What was recently said in *Keyishian* v. *Board of Regents,* 385 U.S. 589, 603-604, is therefore directly in point and controlling:

> We emphasize once again that "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms," *N.A.A.C.P.* v. *Button,* 371 U.S. 415, 438; "[f]or standards of permissible statutory vagueness are strict in the area of free expression. . . . Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *Id.,* at 432-433. New York's complicated and intricate scheme plainly violates that standard. When one must guess what conduct or utterance may lose him his position, one necessarily will "steer far wider of the unlawful zone. . . ." *Speiser* v. *Randall,* 357 U.S. 513, 526. For "[t]he threat of sanctions may deter . . . almost as potently as the actual application of sanctions." *N.A.A.C.P.* v. *Button, supra,* at 433. The danger of that chilling effect upon the exercise of vital First Amendment rights must be guarded against by sensitive tools which clearly inform teachers what is being proscribed.

The immorality provision is unconstitutional also because of overbreadth. In *Shelton* v. *Tucker,* 364 U.S. 479, 488, this Court said:

> In a series of decisions, this Court has held that, even though the governmental purpose be legiti-

> mate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same basic purpose."

This principle has been repeatedly applied to strike down statutes which too broadly interfere with the exercise of First Amendment rights. See, e.g., *NAACP* v. *Alabama,* 377 U.S. 288; *Baggett* v. *Bullitt,* 377 U.S. 360; *Elfbrandt* v. *Russell,* 384 U.S. 11; *Keyishian* v. *Board of Regents,* 385 U.S. 589; *Whitehill* v. *Elkins,* 389 U.S. 54; *United States* v. *Robel,* 389 U.S. 258. It has remained unquestioned despite disagreements within the Court as to whether the particular statute under consideration should be deemed overbroad. But there can be no doubt as to the "immorality" provision, because it has been authoritatively construed in this very case to extend its prohibitions to the exercise of First Amendment rights. For the Court below held that the "immorality" provision extends to Blue's speech to the International Longshoremen & Warehousemen's Union "in an attempt to gain popular support for a recall vote involving the Seward Public School Board members." (App. 70-71.) Yet, as the Court necessarily acknowledged, that speech was constitutionally protected. (App. pp. 86-87.) We cannot readily imagine a more clearly privileged occasion for criticism of public officials than a speech in connection with an election to recall them from their office.

> "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our con-

stitutional system." *Stromberg* v. *California,* 283 U.S. 359, 369.

Thus, as authoritatively construed by the highest court of Alaska, the immorality statute authorizes the discharge of teachers for engaging in conduct protected by the First Amendment. As so construed, it may not stand.

A like conclusion must be drawn with respect to regulation E-7. There can be no doubt that it, too, is unconstitutionally vague, as construed below. On its face, the regulation is perfectly reasonable; it merely prescribes an orderly procedure for the processing of teacher grievances, a familiar technique in employer-employee relations. Compare *Republic Steel Corp.* v. *Maddox,* 379 U.S. 650. There is no hint in this language that it affects the right of teachers to communicate with the public concerning the affairs of the school system or even of criticizing the school superintendent or school board. We submit that the construction of that regulation by the school board, which was approved by the court below, is such a grotesque transformation of its innocuous language that it failed to give adequate warning that petitioners' conduct would contravene it. The imposition of sanctions against them would therefore violate due process even in the absence of First Amendment considerations. *Bouie* v. *City of Columbia,* 378 U.S. 347, 354; *Small Co.* v. *Amer. Sgr. Refining Co.,* 267 U.S. 233, 239.[30]

[30] There is an additional reason why regulation E-7 must be held void for vagueness. When a teacher reads this regulation in conjunction with regulation E-9, he is left hopelessly at sea, because they appear to give inconsistent instructions. Even Superintendent Fabricius, who testified that he had written them, when asked about their meaning, found it all but impossible to reconcile them. (App. pp. 328-340). See the discussion in the opinion of Justice Rabinowitz dissenting on this issue below, (App. pp. 102-105). Compare *United States* v. *Cardiff,* 344 U.S. 174.

But, of course, since the regulation has been interpreted to extend to political activity, it must be judged by the stricter standards of specificity of the First Amendment cases already discussed.

Regulation E-7 is also unconstitutional for overbreadth. Its command that procedures within the school system be exhausted is absolute. No matter how genuine the teacher's "grievance" may be, or how immediately it affects the interests of the school system, he may not bring it to public attention until he has communicated with the superintendent and the school board. A rule which undiscriminatingly cuts off the public from a vital source of *all* information adverse to the administrators of its school system until they themselves in effect release the information by "processing the grievances" is the very autithesis of the "precise" regulation which alone can survive Constitutional challenge in the First Amendment area. Cf. *Shelton* v. *Tucker,* 364 U.S. 479, 487-490. And regulation E-7 is doubly pernicious. For the delays which it exacts apply only to "grievances." Comments favorable to the administrators are not similarly inhibited. This is the very antithesis of the "uninhibited, robust and wide-open" debate on public issues which the First Amendment secures. *New York Times* v. *Sullivan,* 376 U.S. at 282.[11]

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[11] This parallels the imbalance which existed because of the immunity of public officials from libel suits. (*Barr* v. *Matteo,* 360 U.S. 564) prior to the *New York Times* decision. "It would give public servants an unjustified preference over the public they serve, if critics of official conduct did not have a fair equivalent of the immunity granted to the officials themselves." 376 U.S. at 282.

CONCLUSION

By reason of the foregoing, the judgment of the Supreme Court of Alaska should be reversed.

Respectfully submitted,

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December 21, 1967.

APPENDIX A

Seward, Alaska
May 18, 1959

AN OPEN LETTER TO THE
SEWARD SCHOOL BOARD
Seward, Alaska

Gentlemen:

A Seward Branch of the American Federation of Teachers, affiliated with the AFL CIO, has applied for and received confirmation of its charter. The AFT is a recognized organization of professional teachers and thereby commands recognition by the Seward School Board.

The Seward Local takes this means of informing the Seward School Board (and the public) of our stand in the current struggle for a good school. We hold that incidents occurring during the last year have reached such proportions as to be definitely derimental to the morale of our teaching staff and the effectiveness of the local educational system.

1. Illegal nonretention of three teachers, reflecting on the professional reputations of those involved, in violation of Section 138 of the State School Laws, which was later corrected only after the insistence of the Seward Local of the American Federation of Teachers in a public hearing with legal counsel.

2. It is a legitimate duty of administration to maintain or create harmony in the school, and the tension noted in the pupils, and the "friction" which some of them were aware of, does not fit this requirement.

3. Non compliance with the fire drill regulation requiring ten fire drills per year (Sec. III, b, 4, Page 9, Rules and Regulations for the school staff/local/). This applies to both school buildings, one of which is a dangerous building.

4. Ordering the custodian, Jesse Moore, to do technical electrical work beyond his skill in a dangerous building.

5. On different occasions threatening to "get one third of the faculty this year, and half of the remainder next year" in an apparent attempt to "purge" the faculty. Why Mr. Fabricius should have had this preconceived and hostile attitude is unknown. Teachers have raised the question, "How can one man, a stranger coming into a town, have the right to tamper with the livelihood of teachers, taxpayers, property owners, and upset a school system in a single year's time?" More than bringing teachers and others into public disgrace and disrespect, actions cited have jeopardized the property and investments of several people, without giving legitimate cause and without regard for their feelings and personal rights.

6. Provoking the resignation of an outstanding teacher by forbidding him to ride the school bus in what *seems* to be a violation of the intent of the Rules and Regulations Affecting School Transportation, Page 13, Item 31, Laws of the Territory, etc., the apparent authoritarian mishandling of this resignation impairing the teacher's chances for a teaching position elsewhere. This action has placed the School Board and the taxpayers in the possible position of a suit to secure payment of the contract.

7. Dictatorial treatment of teachers, forcing them into the choice of submitting and taking it at the loss of personal dignity, or fighting back in a public spectacle.

8. Speaking in a peremptory and threatening manner in the presence of a pupil, to Mr. Smith.

9. Two specific instances have occurred violating the requirement to provide Educational Leadership in the Local Regulations.

a. Neglect to permit the development of a proper music program.

b. Information relative to the Drama Festival held at Palmer was not made known to the teachers or the student body, although the school had participated ardently and with distinction the previous year.

c. This same requirement is violated in overtly or covertly driving out Mr. Conder, Mr. Swick, Mr. Smith, and possibly others who had a definite contribution to make to the functions of the school.

10. Firing of Mrs. Davis apparently on the basis of personal dislike rather than for dereliction of duty or inefficiency. This resulted in public discussion reflecting adversely on the school, and placed Mrs. Davis in the position of consulting an attorney relative to the collection of salary allegedly due her.

We have, or can secure, sworn statements on every item.

We, the Seward Local of the American Federation of Teachers, have made every effort to secure correction of illegal, unethical, and unfair acts on the assumption that when the School Board knew of them it would take corrective action.

On May 8, 1959, in a public meeting with the School Board, compliance with the law in the matter of nonretention was secured only after great opposition and protest that the "Law had not been tested, and some educators do not regard it as a good law."

At this same time we withheld information contained in this letter in order to keep the school functioning through the end of the school year and commencement.

We then invited the School Board to meet with us privately to clarify the items here presented, to give Mr. Fabricius and the School Board the opportunity to reply, and to

determine the quality of the list of administrative statements and actions. This, in effect, was giving Mr. Fabricius and the Board the opportunity for self defense which was denied the teachers who were not given contracts in April. We arranged a meeting time to suit the convenience of the Board, and our invitation was accepted.

With the exception of Mr. Howell, President, the Seward School Board DID NOT APPEAR, nor was the administration represented.

Therefore we request an immediate special open School Board meeting Tuesday night, May 19, for the purpose of presenting to the Board and the public particulars of administration in the Seward Public Schools, with announcement of the meeting by the Board over Station KIBH. At this time the Local shall demand immediate, guaranteed, substantial improvement in administrative policies including:

1. Validation of contracts offered to formerly nonretained teachers and those effected by additional education requirements.
2. Correction of the situation regarding Mr. Smith and Mr. Swick.
3. Avoidance of unreasonable reassignment of teachers wherever possible.
4. Conformity with standard ethical and professional standards personnel policies, such as outlined by AFT and NEA, especially regarding:
   a. Notification of teachers before their written notice of nonretention.
   b. Attempting to give constructive criticism to teachers, in an effort to correct and help personnel.

It is our sincere hope that, at this meeting, we can reach mutually acceptable solutions to the many problems facing us at this time.

Very truly yours,

SEWARD LOCAL
AMERICAN FEDERATION
OF TEACHERS

Copies: To patrons of the
Seward School.

APPENDIX B

SEWARD PUBLIC SCHOOLS
SEWARD, ALASKA

AMENDED DECISION AND FINDINGS OF FACT OF THE SEWARD SCHOOL BOARD UPHOLDING THE NONRETENTION OF WALTER B. BLUE AND JAMES WATTS

In compliance with the opinion and order of the Board of Appeals, State Board of Education, dated July 1, 1960, a rehearing was held by the Seward School Board on the nonretention of James Watts and Walter B. Blue as teachers in the Seward Public Schools for the school year of 1960 to 1961.

This hearing, commenced on November 4, 1960, continued on November 5 and November 11, and was completed on November 12, 1960. School Board members E. C. Casey, Mrs. Renee Skinner, A. G. McRae and E. Burke were present for the entire hearing. Donald A. Burr appeared as counsel for the School Board. Walter B. Blue and James Watts were present in in person and by their counsel, Mr. Peter B. Walton.

After considering all of the evidence, it is the unanimous finding of the Board that during May and June of 1959 both James Watts and Walter B. Blue (1) committed immoral acts which tended to bring them and the teaching profession into public disgrace or disrespect in that they circulated and published to the School Board in Seward, and to the public in Seward generally, a document entitled "An Open Letter to the School Board," which contained false and inaccurate statements about the Superintendent of Schools, George Fabricius; (2) committed immoral acts which tended to bring them and the teaching profession into public disgrace or disrespect, in that they aided in preparing, distributing and soliciting signatures for a petition for the recall of the Seward School Board members; and (3) failed to comply in a substantial fashion with Regulation E(7) of the Regulations of the Seward School Board in that they presented grievances and complaints directly to the School Board, rather than through the Superintendent of Schools, all of which charges are contained in the Notices of Nonretention and Bills of Particulars served on James Watts and Walter B. Blue.

After considering all of the evidence, it is the further unanimous finding of the Board that during the Spring of 1959 James Watts committed additional immoral acts which tended to bring him and the teaching profession into public disgrace or disrespect in that he solicited other faculty members of the Seward Public School System, namely, Monty Richardson, Benjamin Frampton and Margaret M. Frampton, to join a group, the purpose of which was to oust Superintendent George Fabricius from his job, all of which charges are contained in the Notice of Nonretention and Bill of Particulars served on James Watts.

After considering all of the evidence, it is the further unanimous Finding of the Board that Walter B. Blue committed additional immoral acts which tended to bring him

and the teaching profession into public disgrace or disrespect, in that he made a speech to the International Longshoremen & Warehousemen's Union in Seward, Alaska, in an attempt to gain popular support for a recall vote involving the Seward Public School Board members, in the course of which he told the union members that "We have been unable to get rid of the Superintendent, so we are going to get rid of the Board," or words to that effect, all of which charges are contained in the Notice of Nonretention and Bill of Particulars served on Walter B. Blue.

In support of the foregoing Findings, the Board has made detailed, specific Findings of Fact, which are attached hereto and made a part of this decision.

It is the unanimous decision of the Seward School Board, based on the foregoing Findings, that Walter B. Blue and James Watts not be retained for school year 1960 through 1961. It is further the unanimous decision of the Board that any one of the Board's findings of immorality or substantial noncompliance with Regulations of the School Board is a sufficient reason for nonretention, without reference to any other findings.

At a meeting of the Seward School Board held on ....., 1961, on motion made by ..... and seconded by ....., the foregoing Amended Decision and attached Findings were adopted by vote of the School Board. The recorded vote was as follows:

Mr. E. C. Casey	Yes
Mr. A. G. McRae	Yes
Mr. E. Burke	Yes
Mrs. Renee Skinner	Yes
Mr. Jacque Roth	No Vote

E. C. CASEY, *President*
Seward School Board
Seward, Alaska

Findings of Fact

1. Walter B. Blue and James Watts were teachers in the Seward Public Schools during the school years 1958 through 1959 and 1959 through 1960.

2. In March of 1960, notices of nonretention, accompanied by bills of particular, were duly served on Walter B. Blue and James Watts. Board Exhibits 1 and 2 are copies of said notices of nonretention and bills of particulars.

3. Board Exhibit 12 is a true and correct copy of all the School Board regulations of the Seward Public Schools which were in effect during the school years 1958 through 1959 and 1959 through 1960. Said regulations were adopted by the Seward School Board and put into force at least prior to January 1, 1959, although, through an oversight, this was not reflected in the School Board minutes prior to that date. (Board Exhibit 13.)

4. A copy of the regulations described in Finding 3 was furnished to each teacher in the Seward Public Schools, including teachers Watts and Blue, at some time prior to January 1, 1959. Teachers Watts and Blue were familiar with these regulations, including Regulation E(7), which provides as follows:

> "Grievances, complaints and communications from employees shall be submitted to the Board through the Superintendent. Any employee, or group of employees, may at any time appeal to the Board." (Board Exhibit 12; Transcript 14, 22, 28, 38, 65-6, 73.)

5. On or about May 18, 1959, teachers Watts and Blue actively participated in the preparation of an "Open Letter to the Seward School Board" and, further, actively participated in distributing copies of said letter to the members of the Seward School Board, to Superintendent George Fabricius, and to the public of Seward generally. Board Exhibit 7 is a copy of the "Open Letter to the Seward

School Board" so prepared and so distributed. (Transcript 34, 65-66, 41, 323.)

6. The Open Letter to the Seward School Board, described in the preceding finding, contained various charges by certain Seward School teachers, including teachers Watts and Blue, against Superintendent George Fabricius, which constituted grievances or complaints within the meaning of E(7) of the School Board Regulations. (Transcript 34, 65-66, 41, 323.)

7. None of the grievances or complaints enumerated in Board Exhibit 7 was presented to Superintendent George Fabricius prior to the distribution of the Open Letter to the Seward School Board on May 18, 1959. (Transcript 44-5, 119, et seq., 323.)

8. Teachers Watts and Blue were bound to substantially comply with the School Board Regulations (Board Exhibit 12) on and after May 18, 1959, the date of the distribution of the Board Exhibit 7, which was after the close of the school year but during a period when Watts and Blue were under contract to teach for the next school year.

9. The distribution of the Open Letter to the Seward School Board by teachers Watts and Blue was a violation of Regulation E(7) of the School Board Regulations.

10. Although the Open Letter to the Seward School Board was delivered to Superintendent George Fabricius at substantially the same time that it was delivered to members of the School Board, this procedure did not comply with the requirements of Rule E(7) of the School Board Regulations that grievances and complaints be submitted to the School Board through the Superintendent. (Transcript 349-50.)

11. The Board finds that Item 4 of Board Exhibit 7 referred to an altercation between Superintendent George Fabricius and the School Custodian, Jesse Moore, which

was aired before the School Board. Mr. Moore was not required to do technical electrical work beyond Mr. Moore's ability. (Appellant's Exhibit 7.)

12. Item 5 of Board Exhibit 7 is based on an allegation by James Watts that Superintendent George Fabricius told him that he would "get one-third of the faculty this year and half of the remainder next year." Superintendent George Fabricius did not make any such statement to Mr. Watts, nor to any other faculty member, and the charge to that effect is false. (The Board resolves the direct conflict in testimony between Mr. Fabricius and Mr. Watts on this point in favor of Mr. Fabricius, crediting the testimony of Mr. Fabricius and discrediting the testimony of Mr. Watts. This decision is based in part upon observation of the demeanor of the two witnesses.) (Transcript 121, 224, 269, 311, 387.)

13. The reference in Item 5 of Board Exhibit 7 to the jeopardizing by Superintendent George Fabricius of the property investments of several people without legitimate cause referred to the nonretention of a Seward teacher named Charles Brown. Mr. Brown was not retained by the Seward School system for the school year 1959 through 1960 for cause, because of his inability to maintain discipline among his students. The statement in Item 5 of Board Exhibit 7 to the effect that Superintendent George Fabricius jeopardized the property investments of several people without legitimate cause is false. (Transcript 57-60, 131.)

14. Item 6 of Board Exhibit 7 is a reference to the resignation of former school teacher Jack Condor. Mr. Condor tendered his resignation after an argument with Superintendent George Fabricius, during the course of which he was told by Superintendent George Fabricius that he would have to remain at school until 4:20 P.M., as required of all teachers, and that he would not be permitted to leave at 4:00 P.M. to ride the school bus home. Superintendent

George Fabricius did not forbid Mr. Condor to ride the school bus, in violation of rules and regulations affecting school transportation. The statement in Item 6 of Board Exhibi 7 that the above described incident seemingly constituted a violation of the intent of the rules and regulations affecting school transportation was false. (Transcript 122, 271, et seq., 366, Board Exhibit 17.)

15. Item 8 in Board Exhibit 7 refers to an incident occurring during the Spring of 1959 in which a teacher named Smith argued with Superintendent George Fabricius about the conduct of a study hall. We find, on the uncontroverted evidence, that Mr. Smith lost his temper with Superintendent George Fabricius and resigned. We find on all of the evidence that Superintendent George Fabricius did not act in a peremptory or threatening manner. We find, accordingly, that the statement in Item 8 of Board Exhibit 7 is false. (Transcript 123, 237.)

16. Item 9,c of Board Exhibit 7 charges that Mr. Codor, Mr. Swick and Mr. Smith were "driven out." We find on the record as a whole that Mr. Smith and Mr. Condor tendered their resignations and Mr. Swick, by his own actions, failed to renew his contract and was, therefore, terminated. The charge that the above three teachers were driven out is not supported by the record and we find that the charge is false. (Transcript 122-5, 272, et seq.)

17. The distribution of Board Exhibit 7, containing the false charges described in Findings 11, 12, 13, 14, 15 and 16, to the general public of Seward had a tendency to bring the teaching profession into public disgrace and disrespect, and constituted an act of immorality, as defined in Section 37-5-12, ACLA, 1949, as amended.

18. The distribution of Board Exhibit 7, containing false charges described in Findings 11, 12, 13, 14, 15 and 16, to the general public of Seward by Mr. Watts and Mr. Blue tended to bring Mr. Watts and Mr. Blue into public disgrace or disrespect.

19. On or about April 28, 1959, James Watts asked Mr. & Mrs. Benjamin Frampton, who at that time were members of the faculty of Seward Public Schools, if they would go along with a group of which Watts was a representative and whose purpose was to oust Mr. Fabricius from his job as Superintendent of Schools. (The Board resolves the conflict in testimony between Mr. & Mrs. Frampton and Mr. Watts in favor of Mr. & Mrs. Frampton, crediting their testimony and discrediting that of Mr. Watts. This decision is based in part on the demeanor of the individuals.) (Transcript 12, 20-21, 69-70.)

20. In the Spring of 1959, James Watts solicited Monty H. Richardson, who at that time was a school teacher in the Seward Public Schools, to join a group the purpose of which was to get rid of Mr. Fabricius as Superintendent of Schools. (Th eSchool Board resolved the conflict in testimony between Mr. Richardson and Mr. Watts in favor of Mr. Richardson, by crediting Mr. Richardson's testimony and discrediting the testimony of Mr. Watts. This decision is based in part upon the demeanor of the two witnesses.) (Transcript 22-4.)

21. The conduct of James Watts, described in Findings 19 and 20, tended to bring James Watts into public dispublic disgrace or disrespect.

22. The conduct of James Watts, described in Findings 19 and 20, tended to bring James aWtts into public disgrace or disrespect.

23. During a period beginning on or about May 28, 1959, and continuing into the month of June, 1959, James Watts and Walter B. Blue aided in preparing, distributing and soliciting signatures for a petition for the recall of the Seward School Board members (appellant's Exhibit 20; Board Exhibit 11; Transcript 66-7, 276).

24. The conduct of James Watts and Walter B. Blue described in Finding 23 tended to bring the teaching profession into public disgrace or disrespect.

25. The conduct of James Watts and Walter B. Blue described in finding 23 tended to bring James Watts and Walter B. Blue into public disgrace or disrespect.

26. In an attempt to gain popular support for a recall vote involving the Seward Public School Board members, Walter B. Blue made a speech to the International Longshoremen & Warehousemen's Union in Seward, Alaska, in which he stated, "We have been unable to get rid of the Superintendent, so we are going to get rid of the Board," or words to that effect (Board Exhibit 11; Transcript 48-9).

27. The conduct of Walter B. Blue described in Finding 26 tended to bring the teaching profession into public disgrace or disrespect.

28. The conduct of Walter B. Blue described in Finding 26 tended to bring Walter B. Blue into public disgrace or disrespect.

APPENDIX C

Constitution, Statute and Regulations Involved

United States Constitution:

Amendment I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

AS 14.20.170, prior to amendment by S.L.A. 1966 chapter 104:

Definition of cause [for nonretention of teachers]. The term "cause" as used in section I above (37-5-11, herein) shall be based solely upon: (a) Incompetency which is defined as the inability or the unintentional or intentional failure to perform one's legitimate duties in a satisfactory manner; or (b) Immorality which is defined as conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect; or (c) Substantial noncompliance with the school laws of the Territory or such regulations of the Territorial Board of Education or any other governmental agency as are applicable or of the employing school district; except, that any necessary reduction of staff occasioned by a decrease in school attendance of the district may warrant, in the absence of any of the above reasons, the nonretention of a teacher.

Regulations:

Seward School Board Regulation E(7):

Grievances, complaints and communications from employees shall be submitted to the Board through the

Superintendent. Any employee or group of employees may at any time appeal to the Board.

Seward School Board Regulation E(9):

Employees or groups of employees desiring to address the Board shall address their communication to the Superintendent and not to individual members of the Board, except that copies of any communication may be sent to all Board members.

ERRATA

1. Table of Contents, line 5, change "Overboard" to "Overbroad"; and line 32, change "Rpter." to "Rptr.".

2. Page 2, first full paragraph, line 4, change "and" to "an".

3. Page 4, first full paragraph, line 6, change "overboard" to "overbroad".

4. Page 9, third paragraph, line 2, after "conduct" and before "may" insert "which".

5. Page 10, second full paragraph, line 4, change "petitioner" to "petitioners"; line 5, change "petitioner's" to "petitioners'"; and line 9 after "criticize" and before "its" insert the following:
   "public officials and not with a state's power to dismiss".

6. Page 12, first full paragraph, line 3, delete "legislative".

7. Page 13, second full paragraph, line 20, change "ligitamate" to "legitimate".

8. Page 15, second full paragraph, line 11, change "Counsel" to "Council".

9. Page 21, third full paragraph, line 4, change "innocous" to "innocuous"; and line 6, change "Court" to "court".

10. Page 22, first full paragraph, line 1, change "overboard" to "overbroad"; and line 4, change "overboard" to "overbroad".

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 325

JAMES A. WATTS and WALTER B. BLUE, *Petitioners*

v.

SEWARD SCHOOL BOARD AND BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, *Respondents*

BRIEF OF RESPONDENT SEWARD SCHOOL BOARD

STATEMENT OF FACTS

The facts of this case are accurately and fully set forth in the majority opinion of the Supreme Court of Alaska, reported at 421 P.2d 586. Respondent adopts the recitation of facts contained there. Briefly summarized, the relevant facts are as follows.

Petitioners were teachers in Seward, Alaska, a village of less than 2,000 people. In March of 1960, the Seward School Board sent petitioners notices that they would not be retained for the next school year. In accordance with Alaska law then in effect[1] the notices contained bills of particulars setting forth the causes of non-retention.

Among other charges, the bills of particulars stated that petitioners had assisted in the printing and distribution of an open letter containing false statements against the superintendent of schools with the intent of injuring his professional standing and

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[1] S.L.A. 1957 Ch. 71 §1

destroying community and public confidence in the administration of the schools. The petitioner Watts was charged with taking part in and encouraging clandestine activities of teachers with the purpose of ousting the superintendent of schools. Petitioners were also charged with substantial non-compliance with the regulations of the Seward School Board relating to the filing of complaints and grievances against the administration and the school board.

Petitioners appealed their non-retention to the school board as they had a right to do under Alaska law.[2] Hearings were held before the Seward School Board. Petitioners appeared and were represented by counsel. Petitioners both admitted distributing and open letter to the Seward School Board. The open letter contained a list of ten alleged incidents which were stated to be "definitely detrimental to the morale of our teaching staff and the effectiveness of the local education system." The open letter accused the superintendent of the Seward Public Schools of misconduct ranging from "dictatorial treatment of teachers" to neglect of the music department. The open letter, dated May 18, demanded a confrontation with the school board on May 19. It contained a demand for "immediate, guaranteed, substantial improvement in its administrative policies . . ."

The open letter was distributed by mail to the general public in Seward. Transcript of Hearing of Seward School Board, November 1960, p. 41, 66; hereinafter "Tr". Petitioners admitted that many of the charges set forth in the open letter had never previously been brought to the attention of the superintendent (Tr. 76).

The petitioner Watts, in April of 1959, solicited support from teachers for a private move to oust the superintendent (Tr. 12, 21, 24, 297.)

The Seward School Board entered detailed findings. The charges of the superintendent's misconduct contained in the open letter were found, with one minor exception, to be false. The school board also found that petitioners were guilty of substantial noncompliance with the school board regulations in distributing the open letter before presenting the grievances and complaints which it contained to the superintendent.

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[2] S.L.A. 1957 Ch. 71 §2

SUMMARY OF ARGUMENT

Petitioners were nonretained for "immorality" according to the nonretention statute then in effect. "Immorality" was interpreted by the Alaska Supreme Court as a catch-all phrase serving the same purpose as phrases such as "good cause" or "unprofessional conduct."

A Statute which states that an employee may be dismissed for cause is not the kind of statute that is subject to the objection of overbreadth. There is no specific legislative judgment that a certain activity justifies the penalty of dismissal. Rather there is a delegation to an agency to judge appropriate cases for the imposition of penalties. It is the specific agency judgment that is reviewed on appeal not the statute itself.

The statute allowing dismissal for cause is not void for vagueness, because members of a profession must be charged with knowledge of what kinds of actions are unprofessional. Furthermore, it is impossible to list all specific acts which might constitute "good cause". Therefore a state has no alternative but to employ a dismissal-for-cause technique.

Petitioners' nonretention pursuant to the statute was valid, because their actions did constitute good cause. In reviewing an administrative decision such as the present one the standard to be used is whether there is evidence in the record to rationally justify a finding of good cause. Petitioners only challenge the existence of good cause by asserting that they had a constitutional right to engage in the activities for which they were dismissed. It is clear, however, from an examination of the cases involving specific regulations of conduct, that petitioners did not have a right to engage in solicitations of other employees on school time and to distribute an open letter to the public of Seward which contained many false and misleading statements. Since these activities could have been regulated and forbidden to public employees by specific statutes without constitutional objections, then these actions can also constitutionally form the basis of an adjudication of good cause.

Petitioners' dismissal must be sustained for the additional reason that they violated regulation E-7 of the Seward School Board. The regulation provided that grievances are to be submitted first to

the superintendent to allow him to act upon them, and then an appeal may be taken to the School Board. Petitioners violated the regulation by distributing an open letter simultaneously to the superintendent and the School Board. The open letter contained many grievances and complaints, none of which, with one possible exception, had previously been communicated to the superintendent. Petitioners' dismissal based on the violation of E-7 should therefore be sustained. The School Board's interest in having their employees' grievances go through channels before being taken to the public by means of strike or open letters, is not only a reasonable interest but is a compelling need.

Petitioners' constitutional objections to E-7 of vagueness and overbreadth should not be considered because they were not timely raised. In any case, the objections are without merit. E-7 is not vague; it clearly sets forth a simple procedure for processing grievances. Furthermore, the regulation was applied literally. The regulation is also not overboard. It is not true that the regulation covers some cases where the state interest does not justify the restrictions. Regulation E-7 could not be made narrower.

ARGUMENT

I. THE STATUTE UNDER WHICH PETITIONERS WERE NONRETAINED WAS NEITHER VAGUE NOR OVERBROAD.

Petitioners were non-retained under S.L.A. 1957, Ch 71, §2. At the time in question, tenure teachers could only be dismissed for cause.[3] "Cause" was defined as:

> (a) Incompetency which is defined as the inability or the unintentional or intentional failure to perform one's legitimate duties in a satisfactory manner; or (b) Immorality which is defined as conduct of the person tending to bring the individual concerned or the teaching profession into public disgrace or disrespect; (c) Substantial non-compliance with the school laws of the Territory or such regulations of the Territorial Board of Education or any other governmental agency as are applicable or of the employing school district; . . .

S.L.A. 1957, Ch. 71 §2.

The Alaska Supreme Court determined that immorality as defined in the statute was intended to be a catch-all, serving the same purpose as phrases such as "good cause", "unprofessional conduct", or "conduct unbecoming a teacher." *Watts v. Seward School Bd.*, 421 P.2d 586, 590 (Alaska 1966). This authoritive interpretation of the statute should be accepted by this court. *Cramp v. Board of Pub. Instruction*, 368 U.S. 278, 285 (1961). Such dismissal-for-cause statutes are quite common and are employed as a technique by many states and the Federal Government. For example, an employee may be removed from the federal civil service "for such cause as will promote the efficiency of such service."[4] These phrases necessarily cover a broad range of conduct, because no statute could be framed to include with specificity all the particular acts which might render an employee unqualified to continue his employment. Before consideration of the issues of legitimate state

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[3] S.L.A. 1957, Ch. 71 §1 &

[4] 5 U.S.C.A. §7501(a) (1967) provides:

> An individual in the competetive service may be removed or suspended without pay only for such cause as will promote the efficiency of the service.

See 5 U.S.C.A. §7512 (1967) (preference eligible employees) and see statutes cited in Bellan v. Board of Pub. Educ., 357 U.S. 399, 406 n.8 (1958) and accompanying text.

interests and protected civil liberties, it is of the utmost importance to note the kind of statute under which petitioners were non-retained and specifically petitioner's challenge that the statute was vague and overbroad.

A. The Statute Was Not The Kind of Statute That Would be Subject to the Objection of Overbreath.

In such dismissal-for-cause statutes no legislative judgment has been made that any particular action justifies the imposition of the penalty of dismissal. For example no judgment has been made that failure to sign an oath renders an employee unfit for employment. The legislature has not declared that a state's interest will be advanced by dismissing those employees who engage in a specified activity. Instead, in dismissal-for-cause statutes an agency has been entrusted with the task of finding whether a particular employee's actions constitute good cause for dismissal. Thus the decision that a state's interest will be advanced by the dismissal of an employee has been delegated and is to be made in a judicial fashion on a case by case basis.

Statutes which do contain a legislative judgment that a particular act renders an employee unfit, i.e., impose a penalty for the doing of an act, should be reviewed by different standards than statutes allowing dismissal for cause. In a case such as *Fort v. Civil Serv. Comm'n*, 61 Cal. 2d 331, 38 Cal. Rptr. 625, 392 P.2d 385 (1964) a county charter forbade all county employees from directly making or receiving any contributions to any political party.[5] The constitutional defect was clear. The erroneous legislative judgment had been made that a state interest would be advanced by denial of employment to all employees who contributed money for any political party or purpose whatsoever. A penalty had been imposed by the legislature on an overly broad basis. Any judicial or agency hearing the employee received would only involve the question of whether in fact the employee did the forbidden act. Thus, the only means the employee could have of seeking judicial review of the legislative judgment that his act should be penalized, would

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[5] No officer or employee of the county in the classified civil service shall directly or indirectly make, solicit, or receive or be in any manner concerned in making, soliciting, or receiving any assessment, subscription, or contribution for any political party or any political purpose whatsoever.
392 P.2d at 386.

be to attack the statute for overbreath.[6] By litigating this issue, the employee would be able to make sure that the legislative judgment would be applicable to his case and that benefits were not being denied him without the advancement of a state interest. To not allow a recipient of benefits this kind of judicial review before permitting a denial of his benefits, would in effect sanction a Bill of Attainder. See Comment: The Supreme Court's Bill of Attainder Doctrine: A Need For Clarification, 54 Cal. L. Rev. 212, 250 (1966).

In a case where employment can be denied for unprofessional conduct or as in the federal civil service "for such cause as will promote the efficiency of such service," 5 U.S.C.A. §7501 (a) (1967), the need for and type of judicial review is quite different. There is no legislative judgment that a penalty may be imposed or a public benefit may be denied for a particular reason. Rather, there is a delegation to an agency to judge appropriate cases for the imposition of penalties. Since there is no legislative judgment in the dismissal-for-cause statutes, *a fortiori* the legislative judgment cannot be overbroad, and the issue of overbreadth need not be considered on judicial review. In a dismissal-for-cause statute, an employee is directly given the opportunity to litigate whether what he did, in fact justifies the denial of employment to him. The judgment that the state's interest demands the dismissal of the employee is made specifically in each individual case. The task of judicial review of this kind of procedure is not to decide if the statute is overbroad, but is only to determine if there has been a valid delegation of power,[7] and if the adjudication made under the statute was correct, i.e., that it was not arbitrary, that it was in accordance with substantial evidence, and that the state's interests in the particular case warranted the denial of the benefit.

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[6] In United States v. Robel,—U.S.—.88 Sup. Ct. 419, 427 (1967) Justice Brennan (concurring) pointed to the fact that the defense plant worker received no opportunity "to prove that the statute's presumption that he is a security risk [because of membership in a Communist-action-organization] is invalid as applied to him."

[7] In Jordan v. State Bd. of Ins., 334 S.W.2d 278 280-81 (Tex. 1960) the Texas court upheld the use of the phrase "not worthy of the public confidence" as a standard by which insurance companies could be judged and their licenses revoked. The court held that the true constitutional test was whether the standard was certain enough to facilitate adequate judicial review. The court cited Davis, Adiminstrative Law Treatise, §2.03 (1959). This issue has not been raised in the present case.

B. The Statute Was Not Void For Vagueness.

In the few cases where a dismissal-for-cause statute has been attacked for vagueness it has been upheld. The question of vagueness, appears to be governed by *Beilan v. Board of Pub. Educ.*, 357 U.S. 399 (1958). In that case a teacher was dismissed under the disqualifying ground of "incompetency." His offending conduct was refusing to answer questions propounded by his superior in private concerning his possible association with communist groups. The teacher's contention that due process of law was violated by including his refusal to answer within the term "incompetency" was rejected by the Court. The court mentioned that the Pennsylvania statute under which he had been dismissed, "unlike those of many other states, contains no catch-all phrase, such as 'conduct unbecoming a teacher,' to cover disqualifying conduct not included within the more specific provisions." 357 U.S. at 406. By inference then, it would have been constitutionally permissible to have dismissed the teacher under a catch-all standard. The Court proceeded to note that the term "incompetency" had been broadly interpreted by the Pennsylvania Court and that its dictionary definition was not particularly prescriptive. Since this was so, the Court held, the extension of the term "incompetency" to include the teacher's refusal to answer was not inconsistent with the United States Constitution.

In *Board of Educ. v. Swan*, 41 Cal. 2d 546, 261 P.2d 261, 266 (1953), *cert. denied*, 347 U.S. 937 (1954) the Court rejected an attack on the standard "Unprofessional conduct" as being void for vagueness, with the following statement:

> As was said in the Goldsmith case, 66 Cal. App. at page 168, 225 P. at page 787: "the calling (of a teacher) is so intimate, its duties so delicate, the things in which a teacher might prove unworthy or would fail so numerous, that they are incapable of enumeration in any legislative enactment . . . the teacher is entrusted with the custody of children and their high preparation for useful life. His habits, his speech, his good name, his cleanliness, the wisdom and propriety of his unofficial utterances, his associations, all are involved. His ability to inspire children and to govern them, his power as a teacher, and the character for which he stands are matters of major concern in a teacher's selection and retention. How can all these

things be provided for and offenses against them be particularly specified in a single statute?

While it is true that when one must guess what conduct may lose him his position, one may steer wider of the unlawful zone[8] and that the threat of sanctions may deter almost as much as the application of sanctions,[9] these considerations do not compel the result that a statute allowing dismissal for cause or unprofessional conduct is void for vagueness. As shown above, the necessity of such statutes have been recognized. It is impossible to accurately enumerate all possible grounds which could justify dismissal. Thus, the state has no alternative but to employ the dismissal-for-cause technique.

Second, members of the profession must be charged with general knowledge of what conduct is unprofessional or may constitute "cause". Unprofessional conduct like "good moral character", a condition to the practice of law, is not unconstitutionally uncertain merely because subjective factors are involved.[10] All employees, public or private, know they may be dismissed for cause, yet no one really knows exactly which acts may be considered sufficient cause. However, an employee is protected from arbitrary, irrational or discriminatory interpretation of "good cause" by the procedure of a fair hearing, notice of the charges and by general guidelines set by the ethical standards of his profession.[11]

Furthermore, the statute is not rendered any less valid by the fact that some conduct may be unprofessional involves otherwise protected speech activities. If an employee were dismissed for what was determined to be an exercise of his constitutional rights, it

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[8] Speiser v. Randall, 357 U.S. 513, 526 (1958).

[9] N.A.A.C.P. v. Button, 371 U.S. 415, 433 (1963).

[10] Schware v. Board of Bar Examiners, 353 U.S. 232, 248-49 (1957) (concurring opinion indicating "moral character" not too vague.)

[11] For example, the preamble to the Canons of Professional Ethics of the American Bar Association states in part:

> "No code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life. The following canons of ethics are adopted by the American Bar Association as a general guide, yet the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned.

would not mean that the statute was unconstitutional, but only that his specific dismissal was without valid cause. Compare *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957) with *Konigsberg v. State Bar of Calif.*, 366 U.S. 36 (1961).

In attacking the present statute for vagueness and overbreadth, petitioners have made a fundamental error. The only issue in the present case is whether the state's interest justified denial of employment to petitioners because of their specific actions. The statute which has been interpreted as a dismissal-for-cause statute, can not be attacked as overboard or vague;[12] only specific decisions made under the statute can be attacked on the basis of a lack of actual good cause.

II. PETITIONERS' NONRETENTION PURSUANT TO THE STATUTE WAS VALID.

A. The Appropriate Standard of Review is Whether There is Evidence in the Record Which Rationally Justifies a Finding of Good Cause.

This case involves an administrative adjudication that certain actions taken by petitioners constituted valid grounds for their nonretention as teachers. Because of the broad grounds of invalidity asserted by petitioner, it is important to note what issues are not presented. Although cited more than a dozen times in petitioner's brief, *New York Times v. Sullivan*, 376 U.S. 254 (1964) does not directly bear on the present case. *New York Times* was concerned with a state's power to enforce its defamation laws against those who criticize its own employees in furtherance of legitimate state interests. E.g. *Houston v. United States*, 297 F.2d 838, 841 (Ct. Cl. 1962). If a public employee made a personnel report on a public officer containing negligently false and defamatory statements, the employee may be shielded from a libel suit, but he certainly could be fired for incompetence.

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[12] This is not a case of a condition being attached to public employment, and for that reason Keyishian v. Board of Regents, 385 U.S. 589 (1967) is irrelevant. Also United Pub. Workers of America v. Mitchell, 330 U.S. 75 (1947) and Fort v. Civil Serv. Comm'n, 61 Cal. 2d 331, 38 Cal. Rptr. 625, 392 P.2d 385 (1964) are not directly relevant. In these cases, the issue of protecting political activity was raised in the context of reviewing a specific legislative restriction contained in a statute, in the present case there is no legislative condemnation of a particular activity.

In reviewing an administrative decision such as the present one, the standard to be used is whether there is evidence to rationally justify a finding that a dismissal was made for good cause. Cf. *Konigsberg v. State Bar of Calif.*, 366 U.S. 36 (1961); *Beilan v. Board of Pub. Educ.*, 357 U.S. 399 (1958); and *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957). In *Schware*, the state decision denying membership in the bar because of lack of moral character, was held to be a violation of due process because there was "no evidence in the record which rationally justifie[d] a finding that Schware was morally unfit to practice law." 353 U.S. at 246-47. In general, the standard for review of school board decisions on the nonretention of teachers is the same as the standard for the review of any agency decision. For example, in *Hunter v. Board of Educ.*, 265 Ky. 162, 96 S.W.2d 265, 269 (1936), the court stated that it would not review the wisdom of the teacher's removal but would overturn the agency's decision if it was arbitrary, corrupt, or made without competent evidence. *Appeal of Sullivan County Joint School Bd.*, 410 Pa. 222, 189 A2d 249, 251 (1963), states the same standard for review in similar terms:

> "[A] court of commons pleas should look to see only if there is a manifest abuse of discretion or an error of law on the part of the Superintendent . . .". This rule is especially appropriate where, as here the question involves the competency of a teacher. Not only does the Superintendent possess greater expertise for this difficult determination, but the legislature has assigned to him the very job of establishing the standards by which judgments of competency have to be made.

The issue of constitutional rights in the present case is raised only in the following context: if after a consideration of all relevant factors, petitioners had a constitutional right to do what they did, then it would be arbitrary and unlawful to deny them employment. Whether petitioners had or had not a constitutional right to do what they did is a conclusion, not a premise. It is the conclusion to be reached after weighing the state's interest in regulating the kind of conduct petitioners engaged in, against any restraint on their right to engage in the activity. It is misleading to state as petitioners do, that since citizens have a right to criticize the government, the activity is protected; and since the activity is protected, then petitioners cannot be fired for engaging in it. See Brief for Peti-

tioners, p. 26.[13] What must be decided is not the abstract question whether citizens have a right to criticize government. This case does not involve merely the state's relationship to its citizens as a soverign; for the relationship here is that of employer to employee. The question here is whether the Seward School Board had a legitimate interest in dismissing these teachers.

B. Petitioners' Dismissal was Justified by School Board interests Which Were Both Reasonable and Compelling.

In asserting the School Board's interest in regulating the kind of conduct that petitioners engaged in, it is helpful to examine cases which involve the review of a legislative statute which regulates specific conduct. In reviewing that kind of statute, vagueness and overbreadth are the issues, unlike the present case; however, in deciding a statute is overbroad courts usually set forth a narrower area of permissible governmental regulation. Logically, a specific adjudication, such as the present case, should be sustained, if it dismisses an employee for reasons which fall within an area of permissible regulation. If certain conduct constitutionally could be prohibited by statute for a public employee, then dismissal for the same conduct cannot be attacked on constitutional grounds if such dismissal is made by an agency under a dismissal-for-cause statute.

By the standards set forth in cases involving specific prohibitions, petitioners' non-retention was for reasons which fall within the area of permissible regulation. In *United Pub. Workers of America v. Mitchell,* 330 U.S. 75 (1947) this court noted in sustaining the Hatch Act.

> The essential rights of the First Amendment in some instances are subject to the elemental need for order without which the guarantees of civil rights to others would be a mockery.

330 U.S. at 95. This court went on to hold that restrictions which rationally relate to legitimate governmental interests are permissible. It was recognized that political activities on the employer's premises and during working hours clearly justify restrictions, 330 U.S. at 95 n. 29, and further, that active participation in partisan political

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[13] Brief for Petitioners will hereinafter be cited as "Op.".

campaigns could be the subject of regulation. The interest being served by these restrictions, and which was recognized as legitimate, is the promotion of efficiency and integrity, and the maintenance of proper discipline in the public service. 330 U.S. at 96-97.

If this is a legitimate area of regulation and if the regulations of the Hatch Act were properly sustained as reasonably related to the legitimate interests, then petitioners' dismissal for cause, when the cause would come within the provisions of the Hatch Act, cannot be invalidated on constitutional grounds. If petitioners' actions could have been regulated, then petitioners can be dismissed for their actions under a dismissal-for-cause statute without raising a constitutional issue.

Some state courts have defined the area of permissible constitutional regulations by a standard more stringent than that set forth in *Mitchell*. See for example, *Minielly v. State*, 242 Ore. 490, 411 P.2d 69 (1966); *Fort v. Civil Serv. Comm'n*, 61 Cal. 2d 331, 38 Cal. Rptr. 625, 392 P.2d 385 (1964). In *Bagley v. Washington Township Hosp. Dist.*, 65 Cal. 2d 499, 55 Cal. Rptr. 401, 421 P.2d 409 (1966) it was held that the interest of the state must be a "compelling" one to justify the imposition of restraints on political activities of public employees.

> [W]e hold that a governmental agency which would require a waiver of constitutional rights as a condition of public employment must demonstrate: (1) that the political restraints rationally relate to the enhancement of the public service; (2) that the benefits which the public gains by the restraints outweigh the resulting impairment of constitutional rights, and (3) that no alternatives less subversive of constitutional rights are available.

421 P.2d at 411. All of these cases recognize that the government has some legitimate interests as employer. Furthermore, the one interest recognized as ligitamate by each of the above cases, is the interest in preventing an employee from campaigning against his superior.

> No one can reasonably deny the need to limit some political activities such as the use of official influence to coerce political action, the solicitation of political contributions from fellow

> employees, and the pursuit of political purposes during those hours that the employee should be discharging the duties of his position. *A strong case, we think, can also be made for the view that permitting a public employee to run or campaign against his own superior has so disruptive an effect on the public service as to warrant restriction.*

Fort v. Civil Serv. Comm'n, 392 P.2d 385, 389 (Calif. 1964) (Emphasis added).

As stated before, if conduct can be regulated by statute, then it can be constitutionally made the grounds for dismissal under a dismissal-for-cause statute. On the facts of this case, petitioners' conduct falls within the unprotected area as defined either in *Mitchell* or by the Califorina court in *Fort* and *Bagley*.

The Alaska Supreme Court and the School Board found[14] that Petitioner Watts, acting in his individual capacity and not as a member of any group,[15] during school hours and on school premises (Tr. 12) attempted to solicit the support of Mr. and Mrs. Frampton, two fellow teachers, in his attempt to oust the superintendent, Mr. Fabricius. Both teachers refused to support Watts, and Mrs. Frampton testified that she was "completely shocked" at the request. (Tr. 21) Watts also solicited teacher Monty Richardson (Tr. 24) and made representations during school hours to another teacher, E. G. Nagel, that "if it was the last thing they would do, they would get the superintendent." (Tr. 397). Thus, the record clearly shows that Mr. Watts made repeated efforts to solicit the support of his fellow employees to join a political campaign to oust their superintendent.

In *United Pub. Workers of America v. Mitchell*, 330 U.S. 75 (1947) this court reaffirmed the principle set forth in *Ex parte Curtis*, 106 U.S. 371 (1882) that public employees do not have a right to solicit funds from other public employees for political purposes. It was also recognized in *Mitchell* that "political contributions of energy" stand on an equal footing with contributions

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[14] Petitioners have not specifically argued that any of these factual findings are unsupported by the record.

[15] Watts v. Seward School Bd., 421 P.2d 586, 597-98 (Alaska 1966) Tr. 23, 24

of money. 330 U.S. at 98. Based on the *Mitchell* case, the conclusion is inescapable that petitioner Watt's solicitations of support from his fellow employees fall squarely within the area where the individual's rights as employee and citizen do not outweigh the government's interest as employer.

The court has recognized that there is a deep conviction "that an actively partisan government personnel threatens good administration." *Ibid.* There cannot be harmony and efficiency in an administration in which the employees are forced to choose sides and in which fear exists that political position rather than merit may determine the course of one's career. For these reasons, it was held in *Mitchell* that active participation in political campaigns could be forbidden to public employees.

The distribution to the public at large of the "open letter" by both petitioners was exactly the kind of activity which was recognized in *Mitchell* as a disruptive practice which should be forbidden to public employees. It is true that the publishing of the open letter did not involve a political party *per se*. However, in a small community such as Seward and in a school system of only 30 teachers (Tr. 126) the disruptive result is the same. Instead of working through proper channels, petitioners took their grievances to the public, thus forcing other employees and the citizenry into two camps. Watts admitted he did not think of appealing to the City Counsel or the State Board of Education for help in remedying the grievances, (Tr. 85) nor did he first present the grievances to Superintendent Fabricius (Tr. 76). Mr. Blue stated that there had been friction between the Board and the teachers and that the Board was attempting to implement a program of better discipline among the teachers (Tr. 307-8). It is against this background of a troubled relationship between employer and employee that the rash action of petitioners must be viewed. Mr. Swick, who also participated in the publication of the letter, stated that the purpose of the letter was to stimulate public reaction, short of a recall election, to bring pressure to bear on the School Board to take the steps outlined in the letter (Tr. 284). Since the effort failed to coerce the Board, a recall election was the next step. This, too, failed.

Petitioners were not merely expressing their views on a subject of general concern. They were attempting to motivate a com-

munity to support them in their conflict with their employer. They were instigating a local political campaign against their own superiors, which is at least as disruptive an activity as participating in party politics while in the Federal Civil Service.[16] There can be no question but that the conduct of petitioners in publishing the open letter was within the area of permissible regulation as set forth in *Mitchell.*

It is equally clear that the conduct of Petitioners also falls within the narrower area of permissible regulation as set forth in *Fort v. Civil Serv. Comm'n, supra,* and *Bagley v. Washington Township Hosp. Dist., supra.* While these cases seem to use a more restrictive test than earlier cases, they indicate the facts of the earlier cases would meet their more restrictive test. For example, in *Fort* it was recognized that solicitation of political contributions from fellow employees *(Ex parte Curtis, supra)* could constitutionally be restricted. *Fort* also stated that pursuit of political purposes during working hours was unprotected, and that an employee should not be permitted to campaign against his superiors. Since as has been shown petitioners did just exactly what was described as unprotected in *Fort,* the facts of the case also place it within the narrower area of permissible regulation defined in the state cases, and hence, the adjudication that petitioners' actions were good cause for dismissal cannot be attacked on constitutional grounds.

Petitioners admit, as they must, that "the right to criticize public officials and to associate for the purpose of ousting them peacefully" is not absolute but can be outweighed by state interests. (Op. 29). However, in assessing what state interests might outweigh First Amendment rights, petitioners make the following claims:

1) It is irrelevant that almost all of their allegations in the open letter were found to be false, because such statements have a qualified privilege, (Op. 30).

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[16] This court has recently pointed out that the area of legitimate governmental concern is far wider when it is conduct that is sought to be regulated and only secondarily "pure speech." Walker v. City of Birmingham, 388 U.S. 307 (1967) citing Cox. v. Louisiana, 379 U.S. 536, 555, (1965) as follows:

> We emphatically reject the notion . . . that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching and picketing on streets and highways, as these amendments afford those who communicate ideas by pure speech.

2) Watt's solicitation of the Framptons could not bring discredit on him because it is a citizen's duty to criticize (Op. 32).

3) The solicitation could not discredit the teaching profession because that would be a libel on government which can't be punished (Op. 34).

4) It is irrelevant that the letter was arbitrary and high-handed because the "constitution protects expression and association without regard to the truth, popularity or social utility of the ideas or beliefs which are offered." (Op. 34).

It can be seen that in making these claims, petitioners have not in the slightest degree concerned themselves with weighting the interest of the government as employer against the rights of individuals who are government employees. Petitioners have instead, simply recited the same general cases which show that in other contexts and when other interests are at stake, citizens should not be penalized for expressing their opinions. Petitioners are not being sued for libel. The issue is whether the School Board must continue to employ them. Respondent believes that teachers who circulate falacious and inflamatory open letters to the public at large, without first allowing their employer an opportunity to explain, have demonstrated their unfitness to be teachers.

Petitioners do acknowledge "that the morale and discipline of the public service are among those interests which may require an accomodation between legislative power and individual exercise of First Amendment rights." (Op 36) Petitioners suggest that the appropriate test for deciding when the morale and discipline of public employees requires a restriction of their personal liberties, is the clear and present danger test used in *Wood v. Georgia*, 370 U.S. 375 (1962) which involved the punishment of a sheriff for contempt because he criticized in a press release a ruling of a local court. *Wood* is not helpful in analyzing the present case. In *Wood*, this Court found that no allegation had been made that the sheriff's position, as sheriff, related to the harm his statements could produce, and that there was no question of the performance of his duties as sheriff. 370 U.S. at 393. The sheriff was being punished for the mere expression of his views as any other citizen might be subject to the contempt power. There was no special employer-employee relationship in *Wood* as there is in this case.

There was no element of conduct as opposed to "pure speech" as there is in the present case. Most important the state interests to be protected are much stronger in the present case where the state's interest as employer in maintaining the discipline and effectiveness of public employees has been admitted to be a compelling one.

III. PETITIONERS' NON-RETENTION FOR SUBSTANTIAL NON-COMPLIANCE WITH SCHOOL BOARD REGULATIONS E-7 WAS VALID

Petitioners' teaching contracts were not renewed because, among other reasons, they substantially failed to comply with Seward School Board Regulation E-7. That regulation states:

> Grievances, complaints and communications from employees shall be submitted to the Board through the Superintendent. Any employee, or group of employees, may at any time appeal to the Board.

All teachers were given copies of the regulations of the board; petitioners admitted they were familiar with regulation E-7. (Tr. 14, 66). The Supreme Court of Alaska noted that the regulation required that grievances "should be submitted to the Board through the Superintendent. It provided a right of appeal from the Superintendent to the Board." *Watt's v. Seward School Bd.*, 421 P2d 586, 601 (Alaska 1966). Petitioners violated this regulation by participating in the preparation and simultaneous distribution of an open letter to the superintendent and members of the Seward School Board. 421 P.2d at 601. The open letter contained many grievances and complaints, none of which, with one possible exception, had previously been communicated to the Superintendent. 421 P.2d at 601; Tr. 121.

In sustaining the Seward School Board's conclusion that petitioners were guilty of substantial non-compliance with Board Regulation E-7, the Supreme Court of Alaska noted that not only had a substantial violation of the regulation taken place, but the purpose of the regulation, supplying an orderly process for deciding grievances, had been subverted by petitioners' conduct.

> The factual basis for the charges could have been verified by appellants if they had taken the time to do so. Appellants

> admittedly ignored established democratic procedure for obtaining redress. Instead, they attempted to arouse and inflame the public against the Superintendent and the School Board on charges which were largely untrue. They chose to attempt to substitute the mass meeting for the orderly process of hearing and appeal.

421 P.2d at 607

The regulation does not, as petitioners suggest, conflict with regulation E-9 which provides that copies of communications addressed to the Superintendent may be sent to the School Board. The plan envisaged by these regulations is that grievances are to be submitted first to the Superintendent to allow him to act upon them, although copies can be sent to the Board at the same time. The Board is only to *act* on appeal from the decision of the Superintendent. The open letter was addressed to the School Board, not the Superintendent. The letter's purpose was to force the Board to act directly and within 24 hours on matters which the Superintendent had not considered. Thus, the letter was indeed a violation of E-7.

A need for regulations which define and govern grievance procedure is not unique to the Seward School system, but is widely recognized as essential to orderly school administration. Even in the absence of a specific statute or regulation, an Illinois court said:

> There can be no doubt that if a teacher is aware of a censorable infraction of interscholastic athletic regulations by his school, he should seek to correct it. However, promotion of the best interest of his school dictates that he would first call it to the attention of the coaches and of his principal or superintendent of his school, and, failing action there, call it to the attention of the Board of Education, and then, if necessary, make a formal protest or report to the proper officials of the Illinois State High School Athletic Association.

Jepsen v. Board of Educ., 19 Ill. App. 2d 204, 153 N.E.2d 417, 420 (1958). In *Jepsen* the failure of a teacher to follow orderly channels in processing his grievance was held to be sufficient cause for his dismissal even in the absence of a regulation setting forth the specific procedure to be followed.

Petitioners have stated that the interest of the School Board in maintaining an orderly grievance procedure is "truly inconsequental", (Op. 35), and that public officials should not be able to impose "vows of silence to be observed on pain of discharge." (Op. 36) An employer's interest in having employee grievances go through chanels before being taken to the public by means of strike or "open letters", is not only a reasonable interest, but is a compelling need. What separates democracy from mob rule is the existence of procedural means for orderly change.

Petitioners have not contested the fact that their open letter of May 18, 1959, to members of the Seward School Board and the superintendent was in direct violation of the policy and outlined procedure of regulation E-7. it is a well-established principle that this Court will not disturb state court judgments which rest on independent and adequate grounds, even where these judgments also decide Federal questions. *Henry v. Mississippi,* 379 U.S. 443, 446 (1965.) *Wolfe v. North Carolina,* 364 U.S. 177 (1960.) Petitioners' noncompliance with regulation E-7 is an independent and sufficient state ground for the decision to non-retain petitioners; for that reason, it should not be disturbed.

Petitioners have also raised constitutional objections, vagueness and overbreadth, to Regulation E-7. Op. 45. These objections were first raised in a petition for rehearing to the Alaska Supreme Court, 423 P.2d 678 (Alaska 1967) after that court made its second decision, 421 P. 2d 586 (Alaska 1966). The Alaska Court refused the rehearing and stated.

> This court has not overlooked or failed to consider any question presented to it. The fact is that at no time during the six years this case has been in existence has it ever been urged, either in the administrative tribunals or courts, that there were any constitutional questions related to the issue of the validity and application of Regulation E-7.

423 P. 2d at 678. The raising of the constitutional issues on rehearing was held to violate two established procedural rules of the Supreme Court of Alaska. One, the court will not consider matters on appeal which were not first presented to the lower courts. [17]

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[17] Sanuita v. Common Laborers' Union, 402 P.2d 199, 201 (Alaska 1965) Pollastrine v. Severance, 375 P.2d 528, 531 (Alaska 1962).

Two, the court will not consider on appeal matters which have not been presented in compliance with its rules, which require a statement of points on appeal, and which require the appeal brief to list the questions presented for review, and specifications of error. [18]

Since petitioners' constitutional objections were not properly raised according to State procedure, they should not be considered in this court. The importance of raising constitutional questions "in due time" and in accordance with state procedure was discussed by Chief Justice Stone in *Yakus v. United States*, 321 U.S. 414, 444-45 (1944):

> No procedural principle is more familiar to this Court than that a constitutional right may be forfeited in criminal as well as civil cases by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it. . . . Courts may for that reason refuse to consider a constitutional objection even though a like objection had previously been sustained in a case in which it was properly taken. While this Court in its discretion sometimes departs from this rule in cases from lower federal courts, it invariably adheres to it in cases from state courts, see Brandeis J. concurring in Whitney v. People of the State of California, supra, 274 U.S. at page 380.

In as much as Petitioners have waited six years before asserting their constitutional objections to E-7 and the issues were never properly before the state courts, this Court should refuse to consider them.

Moreover, the supposed constitutional objections to regulation E-7 are completely insubstantial. It is difficult to understand petitioners claim that the regulations's interpretation was a "grotesque transformation of its innocous language" because no one could know it would affect "the rights of teachers to communicate with the public." Op 46. The difficulty arises because the Court did not find that E-7 was violated because of the distribution of the open letter to the public. The violation occurred because the letter was sent to the School Board demanding their immediate action without first submitting it to the superintendent. It was not sub-

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[18] Rules of the Supreme Court of Alaska 9(e), 11(a)(5), (6), See, for example, Parks v. Brown, 368 P.2d 220 (Alaska 1962).

mitted through the superintendent to the Board.[19] In fact, the regulation was interpreted literally.

Petitioners also claim that Regulation E-7 is overboard because it requires all grievances no matter how genuine or immediate to be submitted to the School Board before being brought to the public attention. In order to be overboard, a statute must regulate some instances of activities which are protected from regulation. Petitioners point to no instance when the right to immediate public disclosure would be protected from what is essentially a regulation of time, manner and place. In fact, it is hard to imagine how a regulation such as E-7 could be made narrower. Are petitioners suggesting the regulation should only cover unimportant grievances? Such a regulation could not be made to work. Petitioners can not expect employees with grievances to admit that their complaints are not genuine or immediate.

CONCLUSION

For the foregoing reasons and on the strength of the foregoing authorities, this Court should sustain the decision of the Alaska Supreme Court.

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[19] Watts v. Seward School Bd., 421 P.2d 586, 600 (Alaska 1966) (School Board findings 9 and 10.)

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REPLY BRIEF FOR PETITIONERS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 325

JAMES A. WATTS AND WALTER B. BLUE, *Petitioners*,

v.

SEWARD SCHOOL BOARD AND BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, *Respondents*.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALASKA

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALASKA

REPLY BRIEF FOR PETITIONERS

INTRODUCTION[1]

Respondent says that "the charges of the superintendent's misconduct contained in the open letter were found, *with one minor exception,* to be false." (Resp. br. p. 2, emphasis supplied.) This claim might have constitutional relevance, on the theory that it would support a conclusion that petitioners recklessly disre-

[1] Without pointing to any inaccuracies in Petitioners' presentation of the record evidence, Respondent School Board broadly "adopts the recitation of facts" in the majority opinion below. (Resp. br. p. 1.) While there is much in that opinion which we do not accept, we have confined the expression of our disagreement with the court below to those matters only which bear directly on the issues before this Court.

garded the truth and thereby forfeited the protection of *New York Times* v. *Sullivan*, 376 U.S. 254. But the accusation is entirely unwarranted. Not even the School Board found that paragraphs 1, 2, 3, 7, 9, 9a, 9b or 10 were false.[2] (See Pet. br. pp. 9a-11a.) Nor was anything in the unnumbered paragraphs of the Letter, which further informed the public about the teachers' "current struggle for a good school" (Pet. br. p. 1a), found to be untrue. What the School Board did find, and the court below said was "supported by substantial evidence" as defined by Alaska law (App. pp. 65-66), was that petitioners made six false statements. We show in an appendix to this brief that these findings are either contrary to the evidence, or misinterpret the Open Letter, or label as "false" what are essentially expressions of opinion. Parallel techniques were used by the appellee Board of Education in the companion case, *Pickering* v. *Board of Education*.[3] The facility with which school boards find to be "false", criticisms of themselves or their policies, and thereupon discharge or discipline the critics, vividly demonstrates how a test of truth for public employees' criticism of their superiors would deter them from "voicing their criticism, even though it is believed to be true", *New York Times, supra*, 376 U.S. at 279.

Respondent asserts that "the record clearly shows that Mr. Watts made repeated efforts to solicit the support of his fellow employees to join a political campaign to oust their superintendent" (Resp. br. p. 14). Such

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[2] What does respondent regard as the "one minor exception"? Is it par. 3 (failure to comply with the regulations requiring periodic fire drills), or perhaps par. 7, charging "Dictatorial treatment of the teachers"?

[3] See Brief for Appellant, No. 510, October Term, 1967, pp. 55-67; Brief for Appellee, *id.*, pp. 10-11.

political activity does not lose its constitutional protection even if it is "repeated", but misstatements of what "the record clearly shows" require a response. Richardson expressly denied that Watts had made "a direct statement in soliciting me to oust the superintendent"; the most that he was able to say, on prompting by the School Board counsel, was, "There were certain overtones during the Spring of 1959". (App. p. 161.) Although the School Board gave as one of its reasons for discharging Watts that he solicited Richardson (Finding #20, Pet. br. p. 12a), the court below did not affirm on that basis (App. p. 92). Watts' conversation with Mr. Naegel was not even adverted to in the Board's own findings, or in the Notice of Nonretention.[4]

Contrary to Resp. br. p. 14, the School Board made no finding that Watts' conversation with the Framptons occurred during school hours, but the court below did so state and attached considerable significance to this circumstance (App. pp. 67-69). We think it is irrelevant, since it is not and cannot be claimed that Watts was thereby neglecting any of his teaching duties, or interfering with the Framptons' exercise of theirs, or disturbing the children.[5] There is likewise

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[4] According to Mr. Naegel's testimony, this conversation occurred on the first or second day of the 1960 school year, when Watts had already been discharged (App. p. 547).

[5] In Frampton's words, "this certainly was before the children get there" (App. p. 149). In any event, despite the unqualified assertion in the opinion below, the record simply does not establish when the meeting took place. Mr. Frampton first said that it was "before school". On further prompting he said that he "can't say definitely. I imagine it was somewhere between 8:30 and 9:00, however". (*Id.* p. 146.) Asked on cross-examination whether it could have been before 8:30, he replied, "It's possible, I couldn't say." (*Id.* p. 150.) Mrs. Frampton did not testify regarding the time of the meeting. Watts testified, after describing the conversation, that he "left because it was almost time for 8:30 bell." (App. p. 204.)

no evidence that Watts was "acting in his individual capacity and not as a member of any group" (Resp. br. p. 14). He himself testified that he spoke to the Framptons on behalf of the Executive Committee of the Seward District Teachers Association; and the Framptons said that he invited them to "go along with a group of which he was a representative" (Finding #19, Pet. br. p. 12a). The only conflict was as to what Watts stated the objective of the group to be; on this the School Board accepted the Framptons' version. Contrary to respondent's claim, however, it did not find —nor was it ever even suggested—that Watts had been acting on his own.[6]

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[6] The statement of the court below cited by respondent (p. 14, n. 15) was only that the SDTA did not authorize a move to oust the superintendent. (App. p. 69.) This is true, and seems to us to be strong circumstantial evidence that Watts did not state it to be his group's objective.

In our opening brief we reserved our objection to the school Board's acceptance of the Framptons' testimony in opposition to that of Watts. (Pet. br. p. 3, n. 2). We did not argue the matter at length because there are two separate legal grounds for reversal even if the finding is accepted: (1) his activity was constitutionally protected, and (2) the statutory provision relied upon to sustain his discharge is unconstitutional. But since respondents assert (p. 14, n. 14) that we have not "specifically argued" that the factual finding is unsupported by the record, we hasten to point out the following:

(1) The objective evidence strongly confirms the probability that Watts' version of the discussion was accurate. See Pet. br. pp. 7-9.

(2) The finding is couched in the same terms as Finding #20, that Watts solicited Richardson. But the record shows no "conflict in the testimony between Mr. Richardson and Mr. Watts." This suggests that the same phraseology in the findings regarding the Framptons is artful draftsmanship, rather than a fair assessment of the record. (*Continued on* p. 5)

I. Petitioners' Discharge Violates the First Amendment.

Our opening brief rests squarely on prior decisions of this Court which establish that petitioners' discharge violates the First Amendment. Yet of the cases cited therein only two are referred to by respondent—*New York Times* v. *Sullivan*, 376 U.S. 254 and *Wood* v. *Georgia*, 370 U.S. 375—and respondent seeks to trivialize both.[7] (Resp. br. pp. 10, 17.)

Wood v. *Georgia* conclusively refutes the contention that "the appropriate standard of review is whether

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(3) Other School Board findings are either demonstrably erroneous, or argumentative. See App. A, *infra*.

(4) While the finding regarding Watts and the Framptons was affirmed by the State Board of Education Appeal Committee, the opinion of that body revealed a complete misunderstanding of the record. See Pet. br. p. 13, text and note at n. 10.

(5) The record shows Mrs. Frampton to have been a less than candid witness, who chose not to answer a question "because there is no way to answer it that doesn't put me in the soup" (App. p. 554).

[7] When one recalls that respondent in *New York Times* v. *Sullivan*, 376 U.S. 254, had argued that "libel" is outside the protection of the First Amendment (see *id.* at 268-269), the School Board's effort to restrict its authority to cases involving "a state's power to enforce its defamation laws against those who criticize its own employees" (Resp. br. p. 14) is not without irony. But it is plainly without merit, all the more so after *Bond* v. *Floyd*, 385 U.S. 116, 136. Respondent's attempt to limit *Wood* v. *Georgia*, 370 U.S. 375, to its immediate facts, overlooks that part of the *Wood* opinion which addresses itself to, and rejects, the state's contention that "because the petitioner is sheriff of Bibb County and thereby owes a special duty and responsibility to the court and its judges his right to freedom of expression must be more severely curtailed than that of an average citizen", 370 U.S. at 393. See also *Bond* v. *Floyd*, 385 U.S. at 135-137, disapproving a similar contention regarding state legislators.

there is evidence in the record which rationally justifies a finding of good cause." (Resp. br. p. 10, initial capitals omitted; see also *id.*, p. 12.) For under *Wood*, the test to determine whether utterances on public issues may be punished as contempts is whether they constitute a "substantive evil actually designed to impede" the administration of justice. *Id.* at 389. We regard *Wood* as being particularly close to the present case, because First Amendment rights are entitled to at least as great protection when their exercise is sought to be restricted in favor of agencies of government other than the courts. But *Wood* is not alone; it is in the mainstream of this Court's decisions which tolerate restrictions on the exercise of First Amendment rights only when the State can show a subordinating interest which is compelling." *Bates* v. *Little Rock*, 361 U.S. 516, 524.[8]

None of the governmental interests which have hitherto been asserted to justify petitioners' discharge is sufficient under this standard (Pet. br. pp. 29-41). And *New York Times* v. *Sullivan*, which respondent says "does not directly bear on the present case" (Resp. br. p. 14) establishes not only that petitioners' activities were of the precise character which the First Amendment was designed to protect, but that the countervailing interests which the School Board asserts are wholly inconsistent with the fundamental premises of our democratic society. Respondent objects that petitioners' activities were "disruptive" because they "took their grievances to the public, thus forcing other em-

[8] As *Mine Workers* v. *Illinois State Bar*, 389 U.S. 217, 223-225 again demonstrated, this overriding need must be actual, not merely speculative. Since the present case involves direct interference with the First Amendment rights of free speech and association, *Mine Workers* is the professional misconduct case in point, rather than *Schware* or *Konigsberg* (Resp. br. pp. 10, 11).

ployees [9] and the citizenry into two camps" [10] (Resp. br. p. 15); "that the purpose of the letter was to stimulate public reaction, short of a recall election, to bring pressure to bear on the School Board to take the steps outlined in the letter" (*id.*);[11] and further, that they "admittedly ignored established democratic procedures for obtaining redress [by attempting] to arouse and inflame the public * * *".[12] These are not reasons for

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[9] Without considering its relevance, we note that the observation that the Open Letter "forced employees to choose sides" (Resp. br. p. 15) is baseless. On the contrary, the existing sharp division within the school system was one of the causes for publishing the Open Letter.

[10] While this formulation artfully attempts to bring the case within *United Public Workers* v. *Mitchell*, 330 U.S. 75, it would encompass all political discussion. The Open Letter was "disruptive" and "divided the public into two camps" precisely because it dealt with an issue of great public concern—"the manner in which government is operated or should be operated", *Mills* v. *Alabama*, 384 U.S. 214, 218.

[11] The Board cites Tr. 284 (App. 412-413). We quote the pertinent testimony:

> "Mr. Burr: Did you, at the time of distribution of Exhibit 7 to the public, believe that the public at large could remedy the situation, short of a recall election?
>
> Mr. Swick: Yes, sir.
>
> Mr. Burr: And what course of action did you propose that the public at large could do to remedy what you have set forth in Exhibit 7?
>
> Mr. Swick: Mr. Burr, since we had failed to make contact with the Board, we felt that by making this information available to the rest of the public, that perhaps some of their friends that they would listen to, would get them to examine the truth of the statements and perhaps take appropriate action such as we asked on page 3, namely, that they would demand immediate guaranteed and substantial improvement in the administrative policies, and we outlined them there. There's nothing wrong with that."

[12] Resp. br. p. 19, quoting the Court below (App. p. 86).

denying First Amendment protection to the Open Letter; on the contrary, they establish that the Letter fulfilled the great purpose of that Amendment. *Stromberg* v. *California,* 283 U.S. 359, 369; *DeJonge* v. *Oregon,* 299 U.S. 353, 365; *New York Times* v. *Sullivan,* 376 U.S. 254, 269-271; *Bond* v. *Floyd,* 385 U.S. 116, 136.

Neither the distribution of the Open Letter nor Watts' solicitation of the Framptons[18] can be forbidden under *United Public Workers* v. *Mitchell,* 330 U.S. 75, or the recent state cases which Respondent cites. (See Resp. br. pp. 13-16.) The sentence in the *Fort* opinion which immediately precedes the passage quoted by Respondent reads as follows: "It must appear that restrictions imposed by a governmental entity are not broader than are required to preserve the efficiency and integrity of its public service." Since no such showing can be made with respect to petitioners' activities herein, it would do violence to the principles followed by the California Supreme Court to sustain their discharge. And while Respondent relies heavily on *United Public Workers* v. *Mitchell, supra,* it acknowledges that the immorality provision of the tenure statute contains "no legislative judgment . . . that any particular action justifies the imposition of the penalty of dismissal" (Resp. br. p. 6), thereby substantiating

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[18] Aside from this argument, Respondent attempts to sustain this additional ground for Watts' discharge almost exclusively on the factual premises which we have shown to be erroneous. See pp. 2-4, *supra.* Respondent also points out that "Mrs. Frampton testified that she was 'completely shocked at the request'" (Resp. br. p. 14). But this is without constitutional significance. *Cantwell* v. *Connecticut,* 310 U.S. 296, 310; *Terminiello* v. *Chicago,* 337 U.S. 1, 4; *Cox* v. *Louisiana,* 379 U.S. 536, 551; *Ashton* v. *Kentucky,* 384 U.S. 195, 199-200.

our position that *Mitchell* is not authority for petitioners' discharge. (See Pet. br. pp. 40-41.)

Respondent steadfastly maintains that obedience to its grievance procedures overrides petitioners' First Amendment right to express their views to the public:

> "An employer's interest in having employee grievances go through channels before being taken to the public by means of strike or 'open letters', is not only a reasonable interest, but is a compelling need. What separates democracy from mob rule is the existence of procedural means for orderly change." (Resp. br. p. 20.)

This statement merits special attention, cf. *New York Times* v. *Sullivan,* 376 U.S. at 279, n. 19. When Respondent School Board equates the distribution of information to the public and like political activity, with the strike, it betrays its hostility to the legitimate aspirations of its teachers. (See also App. pp. 246, 416-417.) Indeed, Respondent's gratuitous interjection of the problems posed by public employee strikes gives added force to Petitioners' First Amendment claims. Since they are generally forbidden to strike, the opportunity to address the public and engage in related political activity to improve their working conditions is clearly of the essence of public employees' rights of free speech and association.[14] The asserted equation

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[14] For this reason and also because the electorate is ultimately responsible for his working conditions, the public employee has even greater need than those in private industry to keep open the channels of communication with the public.

The Open Letter would be entitled to the protection of the First Amendment even if it were viewed as simply dealing with a labor dispute or an effort to protect the teachers' own jobs. For "the First Amendment does not protect speech and assembly only to the extent it can be characterized as political. 'Great secular causes, with small ones, are guarded. The grievances for redress

breaks down for an even more significant reason. Whereas a strike may adversely affect the public interest in uninterrupted essential services, the "paramount public interest in a free flow of information to the people concerning public officials, their servants",[15] is postulated and preserved by the First Amendment "to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means."[16] Not a word in Respondent's brief, or in the opinion below, acknowledges the value to the public of free and full debate of public issues, which is the true "procedural means for orderly change" in our democracy.

II. The Statute and Regulation on Which Petitioners' Discharge Was Based Are Unconstitutionally Vague and Overbroad.

Respondent argues that "members of the profession must be charged with general knowledge of what conduct is unprofessional or may constitute 'cause' ". (Resp. br. p. 9.) If this is so, it can only be because commonly known and accepted standards of the profession supply meaning to the statutory language. But Alaska's teacher tenure law, as construed by its highest court, provides no such frame of reference to the teacher, for it subjects his job rights to a judgment "of

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of which the right of petition was insured, and with it the right of assembly, are not solely religious or political ones. And the rights of free speech and a free press are not confined to any field of human interest.' " *Mine Workers* v. *Illinois State Bar*, 389 U.S. 217, 223, quoting from *Thomas* v. *Collins*, 323 U.S. 516, 531. See also *Senn* v. *Tile Layers*, 301 U.S. 468, 478; *Thornhill* v. *Alabama*, 310 U.S. 88, 102-103; *Cafeteria Employees* v. *Angelos*, 320 U.S. 293, 296.

[15] *Garrison* v. *Louisiana*, 379 U.S. 64, 77.

[16] *Stromberg* v. *California*, 283 U.S. 359, 369.

degree depending upon the rules of society and to some extent upon the mores of the particular community" (App. p. 52). To require a teacher to "divine prophetically" whether a particular act or utterance will lose him his position under this essentially *ad hoc* test, "is to exact gifts that mankind does not possess", *International Harvester v. Kentucky,* 234 U.S. 216, 223-224. But it is urged that the immorality statute should not be struck down because vagueness is necessary in statutes of this character. (Resp. br. pp. 8-9.) This argument was fully anticipated at Pet. br. p. 42, but we might add that the supposed difficulty can readily be avoided. The legislature need only define the specific political activities which are forbidden, and provide that these prohibitions are exclusive, so that general language in a civil service or tenure statute, such as "good cause", "non-professional conduct", or "immorality", does not reach political activities.[17]

In our opening brief we demonstrated that the "immorality" provision is also unconstitutionally overbroad because, as construed by the Supreme Court of Alaska, it authorized the discharge of Petitioner Blue for his speech to the longshoremen, although, as that court recognized, such discharge would violate the

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[17] Compare the *Report of the Commission on Political Activities of Government Personnel,* Vol. One, pp. 4, 17, 19-21, and 46-48 (G.P.O., 1968). This Commission, which was charged by Congress with considering the advisability of amending the Hatch Act and kindred legislation, observed that judicial trends since *United Public Workers* v. *Mitchell,* 330 U.S. 75, "have strengthened this Commission's convictions that legislative prohibitions which restrict political activities of public employees should be drawn as specifically as is feasible"; and that these "should be no more extensive than is necessary to protect the merit system and the integrity of the public service." *Id.* p. 17.

First Amendment. Respondent does not dispute this analysis, contending only that "the statute was not the kind of statute that would be subject to the objection of overbreadth." (Resp. br. p. 6, initial capitals omitted). The argument appears to be that since the legislature has made no judgment at all as to what conduct constitutes cause for discharge, the only issue is whether the delegation of such judgment to school boards is permissible. No authority is cited for the proposition that the delegation and overbreadth doctrines are mutually exclusive. It is readily refuted. This Court explained in *Keyishian* v. *Board of Regents*, 385 U.S. 589, 609:

> "Where statutes have an overbroad sweep . . . those covered by the statute are bound to limit their behavior to that which is unquestionably safe."

That hazard is no less where the power to define the standards is delegated to a school board or other administrative officials. Under the laws struck down in *Keyishian*, the legislature had delegated to the Board of Regents authority at least as great as that which school boards exercise under the Alaska tenure statute.[18]

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[18] In *United States* v. *Robel*, 389 U.S. 258, the Court struck down as overbroad a statute which forbade certain persons from working in a "defense facility", so designated by the Secretary of Defense. The concurring opinion of Mr. Justice Brennan reasoned that the statute constituted an impermissible delegation of power to the Secretary. He did not suggest that the overbreadth principle was thereby rendered irrelevant; rather, he was not persuaded that the statute was overbroad, *id.* at 269, 271-272. The opinion of the Court noted that the delegation issue had been raised, 389 U.S. at 261, n. 5, and nothing therein indicated that the scope of the delegation was thought to be germane to the overbreadth issue which the Court regarded as dispositive.

Petitioners' "violation" of Regulation E-7 by circulating the Open Letter was not an "adequate state ground" for their discharge (Resp. br. p. 20) because the regulation does not embody an "overriding" interest justifying the imposition of a penalty for their exercise of First Amendment rights, and because it is itself unconstitutional. We have already shown (pp. 9-10, *supra,*) that the policy of Regulation E-7 (Resp. br. pp. 18-20) is utterly inconsistent with that of the First Amendment. Moreover, the regulation is itself unconstitutional for two reasons—vagueness and overbreadth.[19] Respondent would avoid these objections by arguing that the "court did not find that E-7 was violated because of the distribution of the open letter to the public" (Resp. br. p. 21). This reading disregards the Court's explanation of the purpose of the regulation in its opinion (quoted in Resp. br. pp. 18-19), as well as other portions of Respondent's own brief, where the regulation is said to satisfy a "compelling need"—the "employer's interest in having employee grievances go through channels before being taken to the public by means of strike or 'open letters'

[19] Respondent asserts that these issues were not properly raised below, because they were first presented in the Petition for Rehearing. This objection is without merit. In this very case, the Supreme Court of Alaska affirmed Petitioners' discharge in part by deciding an issue which had not been raised or briefed by any of the parties (see App. pp. 65-66) over the objections of the dissenting Justice to this procedure (App. pp. 92-98). This brings into play the principle of *Williams* v. *Georgia,* 349 U.S. 375, 383: "A state court may not in the exercise of its discretion, decline to entertain a constitutional claim while passing upon kindred issues raised in the same manner." Accord: *Shuttlesworth* v. *Birmingham,* 376 U.S. 339; *Barr* v. *City of Columbia,* 378 U.S. 146, 149.

. . ." (Resp. br. p. 20).[20] Respondent's attempt to reconcile regulations E-7 and E-9[21], (Resp. br. p. 19) seems to us rather to compound the confusion between their commands. (See Pet. br. p. 45, n. 30) To urge, as respondent now does, that the gravamen of the violation of E-7, read in light of E-9, is the attempt to "force" the School Board to act on the grievance without giving the Superintendent a prior opportunity, disregards the second sentence of E-7[22], and the practice followed by the Board itself in its dealings with the teachers both before and after the publication of the Open Letter[23], when no suggestion was made that the regulation was violated. Under these circumstances, to sustain petitioners' discharge for violating the regulation would be worse than imposing sanctions for disobedience to "commands simply vague or even contradictory. There [would be] active misleading." *Raley* v. *Ohio*, 360 U.S. 423, 438; cf. *Cox* v. *Louisiana*, 379 U.S. 559, 571.

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[20] Respondent's belated contention departs also from the theory on which it tried the teachers. See *e.g.* App. pp. 182-183; 211-212, where Board Counsel sought and obtained concessions from both that they had circulated the Open Letter to the public without processing their grievances through the superintendent.

[21] These are set forth in Appendix C, pp. 14a-15a of our opening brief.

[22] "Any employee or group of employees may at any time appeal to the Board".

[23] The original March letter of the Grievance Committee of the Seward District Teachers Association, addressed to the School Board with a copy to the Superintendent, requested a meeting with the School Board. (See Pet. br. p. 4; App. pp. 226-228.) Again, after the Open Letter was distributed, the School Board responded thereto and the requested meeting was ultimately held. (See Pet. br. pp. 8-9; App. pp. 242-246.)

CONCLUSION

The judgment below must be reversed because the statute and regulation on which petitioners' discharge was based are unconstitutional. Moreover, there is at the heart of this controversy the issue which divided School Board Counsel and petitioner Blue at the hearing:

> "MR. BURR: * * * Do you believe that the Freedom —that the right, that what we recognize as a constitutional right of freedom of speech includes the right of any person to make a public statement of an adverse nature about another person's character?
>
> MR. BLUE: In special circumstances, sir, I believe it's a moral right.
>
> MR. BURR: Do you believe it's a constitutional right—I'm not talking about moral rights, Mr. Blue.
>
> MR. BLUE: I believe that as a constitutional right, one does have the right to make a statement which may be adverse to a person's character, if this is on a very serious and important matter, and if it is something that the speaker regards as being necessary to be brought to the attention of the public." (App. p. 468.)

This debate was resolved some three years later, when this Court decided *New York Times v. Sullivan*, 376 U.S. 254.

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March 22, 1968

APPENDIX A

We discuss herein the findings of the School Board which declared to be "false", six statements in the Open Letter. The respective paragraphs of the Open Letter and of the Findings are throughout referred to by number. (The Letter and the Findings are reprinted as Appendices A and B respectively of our opening brief.)

The Board found, contrary to par. 4 of the Open Letter, that "Mr. Moore [the custodian] was not required to do technical electrical work beyond Mr. Moore's ability". (Finding #11.) Only the Letter itself (Exhibit 7) is cited in support of this finding. But a member of the Fire Department testified that he witnessed a fire inspection at which the Fire Chief countermanded a direction of the Superintendent and instructed Mr. Moore not to "touch electrical work—that has to be done by a qualified electrician—it's a fire hazard if it's done any other way." He testified further that Mr. Moore protested that he would lose his job because the Superintendent wanted him to do electrical work. (App. p. 371.) Mr. Moore himself had given a statement to that effect. (App. pp. 390-392.) There was no contrary evidence.

Paragraph 5 of the Open Letter began, "On different occasions threatening to 'get one third of the faculty this year, and half of the remainder next year' ". The School Board chose to interpret this statement as being based on an allegation by Watts regarding a conversation between himself and the Superintendent, and found it to be false by discrediting Watts. (Finding #12.) But the statement is not so limited. There was testimony by a parent that the Superintendent had told her that "probably the heads would roll of about ⅓ of the teachers in the school system" (App. p. 354), and by another citizen that he heard Fabricius say that he "had to clear out about 80% of them" in his previous position "and it looks like I'm going to have to do the same thing here." (App. p. 372.)

Contrary to the implications of Finding #13, the last sentence of Par. 5 referred to the threat of loss of jobs and homes of the teachers generally. Of course, even if the Open Letter had said that Mr. Brown was discharged without legitimate cause, this would have been a matter of opinion, not fact.

Paragraph 6 of the Open Letter was likewise a statement of opinion, carefully qualified as such, by the word "seems" because the authors were not certain of the meaning of the regulation (App. pp. 395-396). Yet the Board found that "the statement in Item 6 * * * that the [Conder] incident seemingly constituted a violation of the intent of the rules and regulation affecting school transportation was false". While petitioners' interpretation of the regulation may have been mistaken, how could the School Board find that they made a false assertion that it "*seems*" to have been violated? (Pet. br. p. 2a, emphasis in Open Letter.)

As Fabricius acidly commented, "Mr. Blue happened to be conveniently present" (App. p. 275) during the former's altercation with Mr. Smith, which was the subject of Par. 8 and Finding #14. Blue testified at the first hearing that he heard Fabricius talk to Mr. Smith "in a peremptory and threatening manner in the presence of a pupil" (R. April 8, 1960, pp. 65-66),* and that he was prepared to explain further if respondents' counsel were to inquire. Counsel never made the effort, although examining him extensively at the second hearing where Blue adopted his prior testimony on this point (App. pp. 450, 452) and was subjected to rigorous cross-examination. He again referred to this incident when asked to explain why he had not presented some of his objections to the Superintendent:

> MR. WALTON: I believe you were also asked why didn't you present some of these extenuative things to Mr.

* The record of this earlier hearing was incorporated into the record of the November 1960 hearing by consent of both parties. (App. p. 453).

Fabricius personally, rather than seeking to go directly to the Board as was done? Can you answer that question?

MR. BLUE: I experienced—witnesse[d] a situation in which a man came to him with a grievance.

MR. WALTON: Who?

MR. BLUE: Mr. Jerry Smith. I didn't relish the thought of going through the same sort of thing myself, that of being spoken to in a peremptory tone, in a threatening manner being accused of things before I even had the opportunity of explaining, which was essentially the Smith situation. (App. p. 489; see also, p. 479.)

The School Board made no finding that it disbelieved Blue.

Paragraph 9c refers to the loss of their jobs by three teachers, under circumstances which were developed at some length on the record (App. pp. 393-395, 424-427). The record also shows that the positions of Messrs. Smith and Swick had been declared vacant. This was one of the matters which the SDTA sought to correct (see Par. 2 of the conclusion of the Open Letter, Pet. br. p. 4a) and which Watts raised at the May 28 meeting with the Board. (App. p. 245.) Thus the Board itself knew that these two teachers would have preferred to stay. The teachers had reason to believe that Conder's resignation was provoked. As Blue put it, "it seemed that the discharge of Mr. Conder was something that could have been handled administratively without sacrificing a good man to the system" (App. p. 390), all the more since Conder was apparently an outstanding and popular teacher (App. pp. 394, 440). The statement that they were "driven out", though declared by the Board to be false (Finding #15) may well have been true, and at worst is in the gray area between fact and opinion.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 325

JAMES A. WATTS AND WALTER B. BLUE, *Petitioners*,

v.

SEWARD SCHOOL BOARD AND BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, *Respondents*.

On Writ of Certiorari to the Supreme Court of Alaska

MOTION FOR LEAVE TO FILE A SUPPLEMENTAL MEMORANDUM AND SUPPLEMENTAL MEMORANDUM FOR PETITIONERS

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On Writ of Certiorari to the Supreme Court of Alaska

MOTION FOR LEAVE TO FILE A SUPPLEMENTAL MEMORANDUM

Petitioners respectfully move this Court pursuant to Rule 41(5) for leave to file a supplemental memorandum which calls the Court's attention to a decision rendered subsequent to argument and comments briefly thereon. The decision is that of the United States Court of Appeals for the District of Columbia Circuit,

in *Meehan* v. *Macy*, (No. 20, 812, April 18, 1968). The opinion of the Court in *Meehan* is addressed to the basic issues involved in *Watts*. And while that opinion supports our position in part, the over-all view it expresses, contains significant inconsistencies, ambiguities and errors. We therefore urge the Court to receive and consider our comments on that case.

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IN THE

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OCTOBER TERM, 1907

No. [illegible]

JAMES A. WARD AND WALTER B. BEUR, *Petitioners*,

v.

SEWARD SCHOOL BOARD AND BOARD OF EDUCATION, APPEAL HEARING COMMITTEE, *Respondents*.

On Writ of Certiorari to the Supreme Court of Alaska

SUPPLEMENTAL MEMORANDUM FOR PETITIONERS

I.

In Mackie v. Mary, the Court of Appeals said:

"As Government services multiply, the liberties of Government employees come to be the liberties of an increasing and substantial portion of the citizenry, and are accordingly given increased recognition. There is a reverse side to the [illegible] with [illegible] [illegible]

In Mechanics Mfg. Co. No. [illegible], April 18, 1968. The opinion of the Court in Mercantile is confirmed to the basic issues involved in Watts. And while that opinion supports our position in part, the over all view it expresses contains significant inconsistencies, ambiguities and errors. We therefore urge the Court to receive and consider our comments on that case.

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SUPPLEMENTAL MEMORANDUM FOR PETITIONERS

I.

In *Meehan* v. *Macy*, the Court of Appeals said:

> "As Government services multiply, the liberties of Government employees come to be the liberties of an increasing and substantial portion of the citizenry, and are accordingly given increased recognition. There is a reverse side to the coin: With mounting provision of increased and increasingly indispensable services rendered by Gov-

> ernment employees, the public weal demands administration that is effective and disciplined, and not beset by turmoil and anarchy."[1]

The latter theme reappears, in even more vigorous language:

> "Free and open discussion within an agency of Government is wholly different from heated debate flowing into the public arena. While a free society values robust, vigorous and essentially uninhibited public speech by citizens, such public speech by Government employees may produce intolerable disharmony, inefficiency, dissension and even chaos."[2]

But this possibility is not the unique characteristic of speech by government employees:

> "Some degree of abuse is inseparable from the proper use of every thing; and in no instance is this more true than in that of the press."[3]

The very question to be decided is whether the abuse is such that the Constitution tolerates the inhibition of speech or other First Amendment rights. The facts recited at pp. 16-17 of the Court of Appeals' opinion may well have justified its conclusion that appellant Meehan's distribution of the letter and poem had such "repercussions in terms of the foreign policy and diplomacy of the United States" as to constitute "a

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[1] Opinion of the Court (hereafter cited as Op.), p. 13. References to footnotes in the Court's opinion will be omitted throughout. The Opinion is reproduced as an Appendix, *infra*.

[2] Op. p. 15.

[3] Madison, in 4 Elliot's Debates on the Federal Constitution, p. 571, quoted in *New York Times* v. *Sullivan*, 376 U.S. 254, 271.

substantive evil actually designed to impede"[4] the operations of the Government in the Canal Zone, thus justifying Meehan's discharge, under the test which we have urged (Pet. Br. pp. 36-37).[5] But it would not be a proper ground for dismissal that Meehan meant "to stir up the reader enough to be receptive to the suggestion that he write his Congressman." Op. p. 20. The prevention of "dissension and chaos" in the administration of government is a "compelling state interest" which may justify the subordination of the employee's free speech; but this is not true of "dissension and chaos" in the public forum, because that is precisely what the First Amendment envisages.

Accordingly, we must respectfully disagree with the Court of Appeals' statement that "Government employees do, to some extent, have lesser rights than others have under the Constitution"[6] and with those portions of its opinion which reflect that approach, particularly those which draw a parallel between the rights of public and private employees, such as the following: "We think it is inherent in the employment relationship as a matter of common sense if not

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[4] *Wood* v. *Georgia*, 370 U.S. 375, 389.

[5] Another example of a permissible limitation is suggested by the Court of Appeals' reference to "the routine service of the Government" (Op. p. 14). Government cannot operate unless the officials ultimately responsible for agency action are served in policy-making and other confidential roles by subordinates in whom they can repose complete confidence. Thus, the constitutional standard which governs all First Amendment cases may lead to a different result when public criticism of his superior originates with a "non-routine" employee.

[6] Op. p. 14. This proposition is squarely refuted by *Garrity* v. *New Jersey*, 385 U.S. 493, 500, which is nonetheless quoted with approval by the Court of Appeals, Op. p. 18, n. 34.

common law that an employee cannot reasonably assert a right to inveigh against his superiors in public and at the same time keep his job." (Op. p. 19)[7] Even in nonpublic employment the "common sense" of employer self-interest has long been compelled to yield to higher public policies.[8] And when the government is the employer, such higher public policy is embodied in the Constitution itself, which, as the Court of Appeals of course recognized, may impinge on the government's "prerogative to hire and fire employees." (Op. p. 14).

The analogy to the private employment relationship is unsound for the more fundamental reason that the objective of government is to promote the general welfare. Achievement of that goal presupposes full public discussion of its affairs—even though this may entail "inveighing against" public officials. When our Nation was founded, this profound truth was regarded as "Common Sense" only by such courageous and far-sighted men as Thomas Paine, Thomas Jefferson, and James Madison, but it is now firmly established as constitutional doctrine.[9] Such discussion will be se-

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[7] This passage has the same beguiling simplicity, and carries equally devastating implications for the First Amendment rights of public employees, as Justice Holmes' "oft-quoted phrase" regarding the constitutional rights of policemen, which the Court of Appeals disapproved. (Op. pp. 13-14).

[8] It is certainly "common sense" for an employer to forbid his employees to join unions, yet the "yellow-dog" contract has long been outlawed.

[9] "The First Amendment, said Judge Learned Hand, 'presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all.' *United States* v. *Associated Press*, 52 F. Supp. 362, 372 (D.C.S.D.N.Y. 1943)." *New York Times* v. *Sullivan*, 376 U.S. at 270.

verely inhibited if the right of public employees to criticize their superiors is subject to norms of "loyalty" derived from private employment, particularly when those norms fail to identify the "employer" to whom "loyalty is due"—the superior official, government as a whole, or the people, who "possess the absolute sovereignty."[10] The public often receives facts and opinions which would otherwise be unavailable from dedicated employees who contemplate no personal advantage. But the Court of Appeals left the unmistakable impression that a disinterested employee would be especially vulnerable to discharge.[11] This is a paradoxical inversion of this Court's holdings that First Amendment freedoms are not forfeited because they are exercised for private purposes or to make a profit. Of course, it was not the reasoning of those decisions that speech selfishly motivated is more valuable; rather, they recognized that if it were denied protection, the "effect would be to shackle the First Amendment in its attempt to secure 'the widest possible dissemination of information from diverse and antagonistic sources.'"[12] The freedoms to speak and to hear, to ~~punish~~ PUBLISH and to read, are correlative and indivisible.[13]

[10] *Id.*, 376 U.S. at 274.

[11] "An employee who flouts elemental loyalty to his employer and their common enterprise provides cause for discharge, except as his acts may be necessary to preserve his own protected rights. Loyalty to the Government employer cannot be held to compel total servility of thought and expression, but it does set a limit on channels and methods available to indicate disagreement with a superior official." (Op. p. 16).

[12] *New York Times, supra,* 376 U.S. at 266.

[13] See, in addition to cases previously cited, *Martin* v. *Struthers,* 319 U.S. 141, 143; *Lamont* v. *Postmaster General,* 381 U.S. 301, 307, and 308 (concurring opinion).

It is this failure to appreciate the "interest of the public in hearing all sides of a public issue" [14] which underlies the Court of Appeals' ready acceptance of "channels" within which the employee must confine his criticism.[15] When Government policy has become frozen, "the power of reason as applied through public discussion" is the ultimate safeguard of the People. Yet experience has taught that in such circumstances the responsible officials are particularly sensitive to and resentful of opposition. They then take refuge behind artificial barriers, depriving the public of access to information without which there can be no meaningful public discussion. For confirmation, we need not look beyond the record in this case.[16]

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[14] *Bond* v. *Floyd*, 385 U.S. 116, 136. Only when the Court of Appeals passed the constitutional discussion did it make reference to this public interest. See, Op. p. 22, text and note at n. 40 where *Bond* is cited. Even this fleeting recognition is more than this interest received in the majority opinion of the Supreme Court of Alaska.

[15] Op. pp. 15-16. To be sure, "Free and open discussion within an agency of Government is wholly different from heated debate flowing into the public arena" (Op. p. 15), but both are indispensable to the government of a free people. It will be noted that the Court of Appeals unconsciously weighted the comparison by its use of adjectives. "Heated debate" within an agency may likewise "produce intolerable disharmony" (Op. p. 15) without any countervailing benefit to public debate. This is illustrated by *Houston* v. *United States*, 297 F. 2d 838 (Ct. Cl.), *cert. denied*, 371 U.S. 815 and *Krennrich* v. *United States*, 340 F. 2d 653 (Ct. Cl.), *cert. denied*, 382 U.S. 870 (Op. p. 15, n. 31), which were therefore rightly decided.

[16] An additional objection to a requirement that employees take their objections through internal channels is that time is usually of the essence for the exercise of First Amendment rights. It follows that such regulations can pass constitutional muster only if internal discussion and resolution of a problem would be inhibited by premature exposure to the public, or if they are necessary

II.

We of course agree with the Court of Appeals that "There is a particular need for clarity and specificity when Government officials are engaged in regulating speech."[17] But it is entirely inconsistent with that principle to approve "catch all" provisions as necessary and adequate, at least where they are construed to reach political activity and other exercises of First Amendment rights. See Pet. Br. p. 42, Reply Br. p. 11. Since the Court of Appeals specifically referred to "immorality," we note also that the Alaska Supreme Court's interpretation of that word is truly extraordinary. We note finally the striking coincidence that in *Meehan* as in *Watts* a "clearance" regulation was on the books, but a long course of contrary practice preceded its enforcement against employees who publicly criticized their superiors.[18] Of course, the Court of

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to preserve some equally important governmental purpose. Such instances will be rare. Failure to obey a rule requiring clearance was expressly held to be an insufficient cause in *Klein* v. *Civil Service Commission,* 152 N.W. 2d 195 (Iowa Sup. Ct.) although the case involved firemen, who are subject to considerably higher standards of discipline than most government employees. Even where such regulations are permitted, they must be narrowly drawn and their enforcement carefully scrutinized by the courts to assure fidelity to the First Amendment. Thus, there is considerable merit to the idea that such regulations must assure prompt "exhaustion" or "clearance," see Op. p. 25, n. 44.

[17] Op. p. 15. We do not understand why the requisite degree of clarity should depend on whether the activity is undertaken in duty hours (Op. p. 18). If an employee fails to perform his assigned work tasks during duty hours, he can be disciplined for *that*.

[18] The dissimilarities should also be noted. In *Meehan* the regulation itself was sufficiently precise. Its subject matter was expressly the distribution of articles and other information to the public, its command was clear, and there was apparently no other regulation which prescribed a different procedure. Compare Op. p. 24 with Pet. Br. pp. 14a-15a.

Appeals was able to reverse on this issue by announcing a rule of federal administrative law, but the requirement of "fair warning" (Op. p. 24) is of constitutional dimensions "in the area of free expression." *N.A.A.C.P.* v. *Button,* 371 U.S. 415. 432.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,812

RICHARD D. MORGAN, Appellant

v.

John W. Macy, Jr., Chairman, et al.,
Civil Service Commission, et al.,
Appellees

APPENDIX

Appeal from the United States District Court
for the District of Columbia

Decided April 18, 1968

Mr. Edward L. Morgan for appellant.

Mr. Joel M. Finkelstein, Assistant United States Attorney, with whom *Messrs. David G. Bress*, United States Attorney, *Frank Q. Nebeker* and *Mrs. Ellen Lee Pace*, Assistant United States Attorneys, were on the brief, for appellees. *Mr. Brent R. Schoenfeld*, Assistant United States Attorney, also entered an appearance for appellees.

Before EDGERTON, *Senior Circuit Judge*, and TAMM and LEVENTHAL, *Circuit Judges*.

LEVENTHAL, *Circuit Judge*: This is an appeal from an order granting the Government's motion for summary judgment dismissing an action by a former employee of the Canal Zone who attacks as unlawful his 1964 discharge by the Canal Zone Government, which was affirmed by the Civil Service Commission in 1965.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,812

RICHARD D. MEEHAN, Appellant

v.

JOHN W. MACY, JR., Chairman, et al.,
Civil Service Commission, et al.,
Appellees

Appeal from the United States District Court
for the District of Columbia

Decided April 18, 1968

Mr. Edward L. Merrigan for appellant.

Mr. Joel M. Finkelstein, Assistant United States Attorney, with whom *Messrs. David G. Bress*, United States Attorney, *Frank Q. Nebeker* and *Mrs. Ellen Lee Park*, Assistant United States Attorneys, were on the brief, for appellees. *Mr. Scott R. Schoenfeld*, Assistant United States Attorney, also entered an appearance for appellee.

Before EDGERTON, *Senior Circuit Judge*, and TAMM and LEVENTHAL, *Circuit Judges*.

LEVENTHAL, *Circuit Judge*: This is an appeal from an order granting the Government's motion for summary judgment dismissing an action by a former employee of the Canal Zone who attacks as unlawful his 1964 discharge by the Canal Zone Government, which was affirmed by the Civil Service Commission in 1965.

We conclude that one of the charges against appellant has been established, but not the other two, and remand so that the agency may consider his case in the light of our rulings.

I Background and Agency Procedure

On January 9, 1964, American authorities in the Canal Zone rejected the request of some 200 Panamanian students, who had made an unannounced march to Balboa High School, that the United States flag be lowered and replaced by the Panamanian and American flags raised simultaneously. The students refused to leave the Zone when requested to do so and rioting broke out.

Between January 9 and January 15, 1964, groups of rioting Panamanians marauded the Canal Zone, protesting the terms and conditions of United States occupation of the Zone. The damage was extensive and when the violence subsided an aura of tension persisted, generated by fears that renewed outbursts might erupt. Panama-United States diplomatic relations, which had been ruptured with the first violence, remained severed, and were not resumed until April 3, 1964.

The United States authorities began a search for means to improve the situation. Toward this end the Governor of the Zone proposed to enlist Panamanians to serve as Canal Zone policemen, positions that had previously been denied to foreign nationals. This augmentation plan was discussed in advance with union representatives at a special meeting, held on February 4, 1964, and conducted at the Governor's direction by the Lieutenant Governor and the Personnel Director. Among the labor leaders summoned to the meeting was appellant, Richard Meehan, then President of the Canal Zone Police Lodge 1798, American Federation of Government Employees (AFGE), as well as a private on the police force.[1] Two other representatives of that lodge and

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[1] The Union's Constitution required that police union officers be police officers as well.

the president of the Metal Trades Council were also present. They were informed of the general terms of the Governor's proposal, and admonished to avoid press disclosure of what they had learned, and to confine any protests to regular channels. As the Personnel Director set forth in a file memorandum subsequently prepared:

> During the meeting the union representatives expressed strong opposition to a proposal for the inclusion of a number of non-United States citizens in the staffing augmentation plan, stating that the [Union] would use all possible means available to them at the Washington level to prevent the employment of non-United States citizens as Canal Zone policemen. I cautioned the union representatives to keep their opposition in regular channels, including appeals to the Congress, and particularly to avoid local issuance of comments or statements which could be used by the Panamanian press to inflame further the current difficulties between the United States and Panama. I, further, stated emphatically that the union group should take every precaution to avoid being quoted in the Panamanian press on this issue. The Lieutenant Governor spoke further on this point requesting that all possible care be taken to present any opposition to the employment plan through regular channels including protests or appeals to the Congress.[2]

Later the same day appellant was sought out, while he was on duty, by representatives of the Associated Press and the New York Times and asked for his opinions about the Governor's augmentation plan and the hiring of Panamanian nationals. Appellant agreed to and did talk to them the next morning, February 5, 1964.

We interject to note appellant's position on the granting of this interview.

(1) He insists that whatever "cautioning" he received at the meeting was a "request" and did not amount to an "order" that he can be disciplined for having violated.

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[2]The quoted statement is a memorandum, addressed to the "record", prepared on February 15.

(2) His further position is that the Governor's "request" implicitly rested on mutuality of agreement to avoid local issuance to the press. He testified that he did not feel bound to silence because he assumed that the Governor was the source of the press' apparent knowledge of the Governor's plan and that any admonition was dissipated by management's own failure to observe the secrecy it had requested.[3]

(3) He also testified that he understood the meeting to be directed against release of comments to the local (Canal Zone) press.

The February 5 interview resulted within a couple of days in news stories both on the Continent and in the Zone, presenting the opinions of both the Governor and "Richard D. Meehan, President of Canal Zone Police Lodge 1798."[4]

On February 12, 1964, appellant expressed his opposition to the Governor's proposal by another, less refined means. During the preceding few days, appellant had arranged for the printing in large quantity of an anonymous letter, a poem signed by one Payne, and an excerpt from the Congressional Record.[5] The poem contained a burning attack on the Governor and his policies. The letter, intended and used to transmit the poem, was addressed to "Dear Friends," and urged the reader to write his Congressman and protest the proposed augmentation plan.[6]

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[3] Meehan expressed his assumption that the obligations were mutual by saying, *inter alia*, that ". . . [i]f they were not, we [the Union] would definitely be at a disadvantage. It showed bad faith on their part." Agency Tr. 59.

[4] The news stories are reproduced in part at J.A. 21, 23. At the hearing appellant contended that these stories were the result of a conversation he had on February 6, 1964, with a local friend and newspaperman, after the Governor had offered the augmentation plan to the public on local television and after the wire services carried the information given at the February 5 interview.

[5] The transmittal of Congressman Flood's speech from the Congressional Record has not been the basis for any disciplinary proceedings.

[6] Appellant based the letter on a model prepared by another, making some changes, and refusing to make changes suggested by the Union's counselor.

Appellant has consistently asserted that these documents were union publications. The agency found, after hearing, that when appellant arranged their printing, he was acting without union authority and as an individual.[7]

On February 12, while attending to other union business during off-duty hours, appellant began distribution of the letter and poem, by delivering a copy of each document to each of two policemen at the police station.[8] The distribution ceased when, apparently due to some confusion, appellant left for another meeting without taking the rest of the documents he brought with him. When he returned to reclaim them and learned they had been sequestered he called for their return as union property, accepting responsibility for their distribution. Subsequently, copies of the letter and poem appeared elsewhere, but appellant has not been affirmatively connected with their appearance.[9]

On February 20, 1964, appellant was notified that he would be discharged on three charges:[10]

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[7] J.A. 80-81.

[8] J.A. 79. Appellant also left 85 copies of the letter and poem in the police booth at the entrance to the Administration Building next to copies of the Spillway, a Canal Zone house organ. The booth was not used by the general public but was visited by a limited number of people who picked up newspapers there. The agency hearing officer found that the evidence did not sustain the specification that appellant left these documents in the booth with intention that they be distributed to the general public. *Ibid.*

[9] J.A. 79. The record indicates that 5,000 copies of these documents were caused to be printed and Meehan did not keep close account of them. Agency Tr. 94-96. The letter and poem were reproduced in the Congressional Record by Congressman Flood on February 27, 1964, 110 CONG. REC. 3918-19. Reference to the existence of these documents was made on February 16, 1964, in the Panama newspapers. J.A. 26.

[10] J.A. 17-21. The notice was in apparent conformity with Canal Zone Government Executive Regulation No. 70 (1962), which defined the procedure governing adverse personnel action. Sections 2.1-2.2 relate specifically to the requisite notice.

Charge 1, for "conduct unbecoming a Police Officer of the Canal Zone Government," related to the publication and distribution of the letter and poem. Specification "a" alleged that these documents contained "derogatory and libelous statements" about the Governor and that they "broadly, vaguely, and intemperately . . . in a sarcastic and contemptuous manner" criticized the Governor and the Executive Branch of the United States Government and their policies. Specification "b" alleged, *inter alia*, that appellant left 85 copies in the police booth with the intention thereby of making public distribution—an allegation denied by appellant and found not proven (*see* note 8 *supra*).

Charge 2, for "failure to obey instructions from your superiors," charged that the cautioning at the February 4 meeting constituted "explicit instructions" not to discuss the personnel augmentation plan, and that appellant's February 5 interview, *inter alia*, constituted a failure to obey instructions.

Charge 3 was for "failure to obtain clearance from the office of the Governor before releasing for publication articles pertaining to Government activities in the Canal Zone." It was based on the alleged violation of Canal Zone Government Executive Regulation No. 67 (1963), which forbade the publication of articles pertaining to Government activities in the Canal Zone without prior approval of their contents by the Governor.[11] The newspaper interview, *inter alia*, was alleged to have been given in violation of this regulation.

Appellant contested his discharge. Pursuant to Canal Zone regulation[12] a hearing was held March 23-24, 1964, before an agency examiner, who on April 10, concluded that charges 1(a), 2, and 3 had been sustained and that the discharge was warranted. On April 15, appellant was informed he was to be discharged effective April 16, for the reasons

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[11] The regulation is set forth below in Part VIII.

[12] Canal Zone Government Executive Regulation No. 70 (1962).

stated in the original charges as found by the hearing examiner. Meehan's appeal from this discharge was denied May 6, 1964, by the Governor, who found that the "charges against you are fully supported by the evidence and warranted your discharge from the service."

Exercising his rights as a Veteran's Preference Employee, Meehan appealed to the Civil Service Commission where further evidence was taken on June 19, 1964, before the Appeals Examining Office. That office sustained the discharge in its decision of September 3, 1964, which concluded that, with certain exceptions, the facts were as found by the agency, and that no change should be made in the agency's personnel action. That decision was affirmed February 8, 1965, by the Board of Appeals and Review, in the final action of the Civil Service Commission. One year later appellant, having received the support of the AFGE, filed his complaint seeking a declaratory judgment and a mandatory injunction to remedy his allegedly illegal discharge.

On this appeal from the summary judgment dismissing his complaint we consider and reject the broad objections lodged by appellant against the disciplinary proceeding on grounds that his activities were sheltered by Executive Order 10988, and his right to petition to Congress. We conclude the agenoy was warranted in finding that Charge 1 had been sustained. However, we think the record does not contain adequate support for conclusions that appellant can be discharged for the violations set forth in Charges 2 and 3. We remand to the District Court for the framing of an order to allow the agency to reconsider appellant's discharge in the light of these rulings.

II Rights of Federal Employees Deriving From Union Membership.

Appellant claims an immunity from discharge on the basis of Executive Order 10988.[13]

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[13] 27 Fed. Reg. 551 (Jan. 19), 1962 U.S. Code Cong. & Ad. N. 4269 (1962).

We need not consider whether there is merit in his attacks on the agency's conclusion that at all relevant times he was acting as an individual and not as a union officer.[14] Nor need we consider his contention that his case may be distinguished from those holding that Executive Order 10988 does not create any judicially cognizable rights.[15]

It suffices in the present case to point out that Executive Order 10988, by its clear language, has no application to appellant's activities. The pertinent provision, entitled "Employee-Management Cooperation in the Federal Service" reads as follows:

> Section 1(a). Employees of the Federal Government shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, . . . to participat[e] in the management of the organization and acting for the organization in the capacity of an organization representative, including *presentation of its views to officials of the executive branch, the Congress or other appropriate authority*. [Emphasis supplied.]

The regulation by its terms provides for presentations within official channels, and establishes no special warrant for appeals to the public.

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[14] Appellant attacks this conclusion of the agency hearing examiner as arbitrary and capricious. Eustace v. Day, 114 U.S.App.D.C. 242, 314 F.2d 247 (1962) (per curiam); Hargett v. Summerfield, 100 U.S. App.D.C. 85, 243 F.2d 29, *cert. denied*, 353 U.S. 970 (1957); Carter v. Forrestal, 85 U.S.App.D.C. 53, 175 F.2d 364, *cert. denied*, 338 U.S. 832 (1949). The Examiner noted that the Union rules required authorizations for the expenditure of money and that Meehan did not have such authority when he directed the publication of the documents.

[15] Manhattan-Bronx Postal Union v. Gronouski, 121 U.S.App.D.C. 321, 350 F.2d 451 (1965), *cert. denied*, 382 U.S. 978 (1966); National Assn. of Internal Revenue Employees v. Dillon, 123 U.S.App.D.C. 58, 356 F.2d 811 (1966) (per curiam); Morris v. Steele, 253 F.Supp. 769 (D. Mass. 1966).

Nor is the scope of Executive Order 10988 expanded by the implementing regulations promulgated for the Canal Zone.[16]

III Claim That Appellant's Activities Were Only a Petition to Congress.

Appellant also claims that the preparation and publication of the letter and poem cannot be a ground for valid discharge because these documents were petitions to Congress within the meaning of 5 U.S.C. § 7102 (1964 Supp. II).[17] *Cf. Swaaley v. United States*, 376 F.2d 857 (Ct. Cl. 1967).

This case is wholly different from *Steck v. Connally*, 199 F. Supp. 104 (D.D.C. 1961), where the court held that § 7102 prohibited the discharge of an employee who went directly to Congress with his grievance. We do not think the right of Federal employees to petition to Congress embraces a right to launch a broad public appeal to induce their friends and sympathizers to write to their Congressmen. *Compare Swaaley v. United States*, 376 F.2d 857 (Ct. Cl. 1967); *NLRB v. International Brotherhood of Electrical Workers*, 346 U.S. 464 (1953).

IV Issue Whether Agency Invoked Requisite Standard of Efficiency of the Service.

Since appellant has status as a Veteran's Preference Eligible, he cannot legally be discharged except for such cause as promotes the efficiency of the service. 5 U.S.C. § 7512

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[16] These regulations merely provide that agency management is prohibited from: "(a) Interfering with, restraining or coercing any employee in the exercise of the rights assured by Executive Order No. 10988, including those set forth in section 1 of the Order. . . ." *Standards of Conduct for Employee Organizations and Code of Fair Labor Practices*, Pt. B, § 3.2(a)(1) (Draft).

[17] It is unnecessary to consider whether appellant has been deprived of any right to petition under the First Amendment since, at least to the extent that the target of an employee's petition is Congress, the statutory immunity is, under the facts of this case, no less great than that afforded by the Constitution.

(1964 Supp. II). Regulations of the Civil Service Commission have sketchily elaborated on the type of conduct that constitutes such cause, but these regulations do not cover appellant's conduct specifically and they conclude with the general ground of "any . . . other disqualification which makes an individual unfit for the service."[18]

There is decisional law approving agency determinations that an employee's discharge will promote the service's efficiency. Although there are some exceptions,[19] in general the courts defer to the agency as the appropriate judge of what is an appropriate cause for discharge as needed to promote efficiency of the service, provided its decision is not arbitrary or capricious.[20]

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[18] 5 C.F.R. § 731.201 (so-called Suitability Disqualifications) made applicable to adverse actions by 5 C.F.R. § 752.104 on January 16, 1964, 29 Fed. Reg. 429. Prior to January 16, 1964, the applicable regulations merely mouthed the statute. In September 1966 Canal Zone employees were singled out and made subject to special regulations which took account of "the nature of the Canal Zone enterprise, its geographical location, and the political status of the United States in the Canal Zone. . . ." Canal Zone Regulations, 31 Fed. Reg. 12202, at 12347, 35 C.F.R. § 255.735-1(b).

[19] *See* Pelicone v. Hodges, 116 U.S.App.D.C. 32, 320 F.2d 754 (1963).

[20] *E.g.*, Studemeyer v. Macy, 116 U.S.App.D.C. 120, 321 F.2d 386, *cert. denied*, 375 U.S. 934 (1963) (insubordination); Leonard v. Douglas, 116 U.S.App.D.C. 136, 321 F.2d 749 (1963) (philosophical incompatibility at the policy making level); Dew v. Halaby, 115 U.S.App.D.C. 171, 317 F.2d 582 (1963), *cert. denied*, 376 U.S. 904 (1964) (criminal accusations without convictions); Carter v. Forrestal, 85 U.S.App. D.C. 53, 175 F.2d 364, *cert. denied*, 338 U.S. 832 (1949); Taylor v. Macy, 252 F.Supp. 1021 (S.D.Calif. 1966) (criminal convictions that had been expunged). *See* Note, 66 COLUM. L. REV. 719, 722-24 (1966). And the agency is not required to consider the employee's entire performance record in applying the standard. DeFino v. McNamara, 109 U.S.App.D.C. 300, 287 F.2d 339, *cert. denied*, 366 U.S. 976 (1961).

The Appeals Examining Office held that since the charges against appellant had been proved the discharge was for such cause as would promote the efficiency of the service. That appellant's discharge on the grounds set forth in the charges would promote the efficiency of the service has been the agency's consistent position in its briefs before all administrative tribunals and in court. Appellant, however, in reply brief and on argument, builds on the fact that the initial charges filed against him did not contain the express assertion that his proposed discharge would promote the efficiency of the service; and claims that the subsequent expression of this assertion is tantamount to a new and distinct charge without support in the prior proceedings.[21]

This contention of appellant seeks to exalt form above substance. The efficiency of the service is the standard for judging an employee's tenure that the agency is obliged by the Veteran's Preference Act to apply. That standard was invoked by the Civil Service Commission expressly and by the agency as a matter of fair implication.

In *DeBusk v. United States*, 132 Ct.Cl. 790 (1955), *cert. denied*, 350 U.S. 988 (1956), the discharge was upheld although neither the agency's charges nor the decision of the Civil Service Commission specifically stated that the plaintiff's removal was for a cause that "will promote the efficiency of the service." The court explained:

> However, all three of these documents [notice of charges, opinion of the Appeals Examiner, and letter from the Board of Appeals] referred to section 14 of the Veteran's Preference Act of 1944 [setting forth the cause standard]. . . . It is natural to conclude that these men would not have cited this statute without having in mind the standard of adjudication set out therein. From the circumstances of this case it appears that the administrative officials did in fact invoke the proper standard, and the mere absence of an express invoca-

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[21] Reliance is misplaced on Pelicone v. Hodges, 116 U.S.App.D.C. 32, 35, 320 F.2d 754, 757 (1963).

> tion of the statutory standard cannot, under such circumstances, have an effect on the validity of an otherwise valid personnel action.

132 Ct.Cl. at 794. In *Blackmon v. Lee*, 92 U.S.App.D.C. 268, 205 F.2d 13 (1953), although the decision of removal did not include an explicit finding that the discharge would be for adequate cause, the discharge was upheld, *inter alia*, on the ground that the letter of charges made a reference to section 14 of the Veteran's Preference Act.

In the case at bar, although the agency did not refer to section 14, the agency proceedings were expressly pursuant to Canal Zone Executive Regulation No. 70 (1962). This regulation then provided specifically in § 1.2(a): "Adverse action against an employee shall not be taken except for such cause as will promote the efficiency of the service. . . ." Plainly what was intended was the same standard as that contained in the Veteran's Preference Act and the Civil Service Act.[22] The agency action may not be fairly vitiated on the ground that it failed to invoke and apply the correct standard in considering appellant's case. *Cf. Blackmon v. Lee, supra; DeBusk v. United States, supra.*

V Freedom of Speech Issues.

Appellant contends his discharge violates his assured freedom of speech,[23] since it was based on opinions on public affairs and officials protected by *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), and its progeny.[24] This claim

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[22]This conclusion is reinforced by § 1.4 of Canal Zone Executive Regulation No. 70 (1962) wherein Veteran's Preference Eligibles are brought within the coverage of the procedures set forth therein.

[23]It is unnecessary to consider whether the First Amendment restricts governmental action in the Canal Zone since 1 CANAL ZONE CODE § 31(3), 76A Stat. 2 (1962) extends the free speech guarantee and "the body of law developed under the First Amendment" to that area. Brief of Appellees 21-22 n.17.

[24]Most especially, Garrison v. Louisiana, 379 U.S. 64 (1964). *Cf.* Bond v. Floyd, 385 U.S. 116 (1966). *See* Swaaley v. United States, 376 F.2d 857 (Ct. Cl. 1967); Turner v. Kennedy, 118 U.S.App.D.C.

was rejected at the administrative level, the Appeals Examining Officer invoking Justice Holmes' oft-quoted ruling in Massachusetts: "The petitioner may have a Constitutional right to talk politics, but he has no Constitutional right to be a policeman."[25]

Courts are increasingly re-examining and considering the issue whether and to what extent the Government's prerogative to employ or discharge permits it to regulate conduct of its employees that would, in the absence of the employment relationship, be protected from interference by the First Amendment.[26] As Government services multiply, the liberties of Government employees come to be the liberties of an increasing and substantial portion of the citizenry, and are accordingly given increased recognition.[27] There is a reverse side to the coin: With mounting provision of increased and increasingly indispensable services rendered by Government employees, the public weal demands administration that is effective and disciplined, and not beset by turmoil and anarchy.

104, 332 F.2d 304 (dissenting opinion), *cert. denied*, 379 U.S. 901 (1964); Watts v. Seward School Bd., 421 P.2d 586, 610 (Alaska 1966) (dissenting opinion), *cert. granted*, 389 U.S. 818 (1967); Bagley v. Washington Twp. Hosp. Dist., 55 Cal.Rptr. 401, 421 P.2d 409 (1966) (in bank); Fort v. Civil Service Commn, 38 Cal.Rptr. 625, 392 P.2d 385 (1964); Pickering v. Board of Educ., 36 Ill.2d 568, 225 N.E.2d 1, 7 (dissenting opinion), *probable jurisdiction noted*, 389 U.S. 925 (1967).

[25] J.A. 81, 102-03. The language of Justice Holmes appears in McAuliffe v. City of New Bedford, 155 Mass. 216, 220, 29 N.E. 517 (1892).

[26] *See, e.g.*, United States v. Robel, 389 U.S. 258 (1967); Keyishian v. Board of Regents, 385 U.S. 589, 605-06 (1967); Garrity v. New Jersey, 385 U.S. 493, 500 (1967); Elfbrandt v. Russell, 384 U.S. 11 (1966); and cases cited in note 24, *supra*.

[27] Bagley v. Washington Twp. Hosp. Dist., *supra* note 24, 55 Cal. Rptr. at 409, 421 P.2d at 417. *See* Creech, *The Privacy of Government Employees*, 31 LAW & CONTEMP. PROB. 413 (1966).

We do not approve the apparent premise of the Appeals Examining Office that an employee of the Government cannot claim the right to both a Government job and freedom of speech. One who enters the routine service of the Government[28] cannot be forced to cede all of his protections from Governmental excesses. Whatever liberties a private employer might have or take, the Government cannot disregard the Bill of Rights merely by calling on its prerogative to hire and fire employees. The Constitutional climate of today is different from that of 1892 when Justice Holmes struck off his oft-quoted phrase.

Government employees do, to some extent, have lesser rights than others have under the Constitution. *See United Public Workers v. Mitchell*, 330 U.S. 75 (1947). But in some aspects, at least, their constitutional rights are inviolable notwithstanding their status as Government employees.

Recently, in *Garrity v. New Jersey*, 385 U.S. 493, 500 (1967), the Supreme Court held that certain constitutional rights were retained by policemen, stating: "There are rights of constitutional stature whose exercise a State may not condition by the exaction of a price." Assertion of First Amendment rights was mentioned specifically as sharing this constitutional rank.[29]

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[28] *Compare* Leonard v. Douglas, 116 U.S.App.D.C. 136, 321 F.2d 749 (1963).

[29] *See also* Sherbert v. Verner, 374 U.S. 398, 404 (1963), that the Constitution does not permit "liberties of religion and expression . . . [to] be infringed by the denial of or placing of conditions upon a benefit or privilege." *Compare* Rudders v. United States, 96 U.S.App. D.C. 329, 331, 226 F.[illegible] 51, 53 (1955): "The District of Columbia Code provides that a tenancy from month to month may be terminated on 30 days' notice, and that a landlord may recover possession in the Municipal Court. The Code does not require that a reason for termination be given. But those propositions do not decide this case. The government as landlord is still the government. It must not act arbitrarily, for, unlike private landlords, it is subject to the requirements of due process of law. Arbitrary action is not due process."

On the other hand we do not agree with appellant that an employee may, without fear of discipline, say anything and anywhere whatever a private person may say without fear of a libel action, under the doctrine of *New York Times*. The added interests of the sovereign as employer are factors to be considered in adjusting and balancing constitutional concerns.

In *Swaaley v. United States*, 376 F.2d 857 (1967), the Court of Claims held that some aspects of *New York Times v. Sullivan* have rightful application as restrictions on the Government's employer prerogatives. However, Swaaley's "offense" consisted only of reporting, to his ultimate superior, certain suspected (but, it developed, unfounded) improprieties of his immediate superiors. The standard used by *New York Times* for defining the statements that are nonactionable when made by a private citizen was held by the court to define the statements of a Government employee that are protected when made in channels encompassed by the Constitutional right to petition.[30]

Free and open discussion within an agency of Government is wholly different from heated debate flowing into the public arena. While a free society values robust, vigorous and essentially uninhibited public speech by citizens, such public speech by Government employees may produce intolerable disharmony, inefficiency, dissension and even chaos.[31]

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[30] *Compare* Linn v. Plant Guard Workers, 383 U.S. 53, 65 (1966).

[31] *E.g.*, Eustace v. Day, 198 F.Supp. 233 (D.D.C. 1961), *aff'd*, 114 U.S.App.D.C. 242, 314 F.2d 247 (1962) (per curiam); Levine v. Farley, 70 U.S.App.D.C. 381, 107 F.2d 186 (1939), *cert. denied*, 308 U.S. 622 (1940); Jenson v. Olson, 353 F.2d 825 (8th Cir. 1965); Veatch v. Reor, 266 F.Supp. 893 (D. Colo. 1967); Krennrich v. United States, 340 F.2d 653 (Ct. Cl.), *cert. denied*, 382 U.S. 870 (1965); Houston v. United States, 297 F.2d 838 (Ct. Cl.) (per curiam), *cert. denied*, 371 U.S. 815 (1962); Dulcy v. United States, 284 F.2d 687 (Ct. Cl. 1960). In addition, *see Bagley, Watts*, and *Pickering*, note 24 *supra*.

There is a natural and entirely reasonable difference between the kind of discipline and limitation on speech the Government may impose on its employees and the kind it may impose on the public at large.

In our view appellant's conduct in printing and beginning distribution of the letter and poem was a legitimate basis for discharge to promote the efficiency of the service. These documents, especially the poem, were intemperate and sarcastic, a contemptuous and derogatory lampoon of the Governor and his policies.

An employee who flouts elemental loyalty to his employer and their common enterprise provides cause for discharge, except as his acts may be necessary to preserve his own protected rights.[32] Loyalty to the Government, employer cannot be held to compel total servility of thought and expression, but it does set a limit on channels and methods available to indicate disagreement with a superior official.

Meehan was not an ordinary civil servant but was a policeman whose sensitive duty it was in that tense and troubled time and place to execute the commands of the Governor. The fact that Meehan was also the spokesman for the police union may have increased his authority to speak in behalf of his union members when he confined his speech to appropriate channels. It also gave him a stature and commensurate responsibility, both to the union and to the employer, to confine himself to channels and to exercise temperance.

The Governor had the power to command Meehan not to disclose information about the augmentation plan to the newspapers under the circumstances that then prevailed. The situation in the Canal Zone was tense and official

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[32] *Compare* NLRB v. Washington Aluminum Co., 370 U.S. 9, 17 (1962); NLRB v. Local Union No. 1229, International Bhd. of Elec. Workers, 346 U.S. 464, 476-77 (1953).

apprehension of renewed rioting was reasonable. The confidential information given to Meehan and the other employee representatives could have had an incendiary effect upon the public. The time was troubled not only because of local disorders within the Zone, but also because of their repercussions in terms of the foreign policy and diplomacy of the United States. Against this backdrop the Government clearly may make reasonable demands of secrecy which, if violated, may result in reasonable discharges for insubordination.

While the Government's interests invested it with broader powers to suppress or inhibit the public speech of its employees, there appears no compelling interest that relieves the Government of its obligation to define narrowly and with as much precision as feasible the speech which it proscribes. There is a particular need for clarity and specificity when Government officials are engaged in regulating speech. In the most recent reiteration of that need the Supreme Court said:

> We emphasize once again that "[p]recision of regulation must be the touchstone in an area so closely touching our most precious freedoms," *N.A.A.C.P. v. Button*, 371 U.S. 415, 438; "[f]or standards of permissible statutory vagueness are strict in the area of free expression. . . . Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *Id.*, at 432-433. . . . When one must guess what conduct or utterance may lose him his position, one necessarily will "steer far wider of the unlawful zone . . . ." *Speiser v. Randall*, 357 U.S. 513, 526. For "[t]he threat of sanctions may deter . . . almost as potently as the actual application of sanctions." *N.A.A.C.P. v. Button, supra*, at 433. The danger of that chilling effect upon the exercise of vital First Amendment rights must be guarded against by sensitive tools which clearly inform teachers what is being proscribed. *See Stromberg v. California*, 283 U.S. 359, 369; *Cramp v. Board of Public Instruction*, 368 U.S. 278; *Baggett v. Bullitt*, [377 U.S. 360].

Keyishian v. Board of Regents, 385 U.S. 589, 603-04 (1967).[33] Since public employees have some rights of free speech, the Government is required to be reasonably specific in notifying its employees as to utterances that are prohibited before it can make those utterances a basis for discipline.[34] Precision is all the more requisite where, as here, the conduct which has evoked retaliation occurred during off duty hours.

This discussion of general interests and standards serves as a basis for rejecting appellant's broad claims of sweeping immunity, and stands as a frame for focusing on the specific charges.

VI THE CHARGE OF CONDUCT UNBECOMING AN OFFICER.

The first charge against appellant was "conduct unbecoming an officer" consisting of the preparation and publication of the derogatory letter and poem.

a. We begin by examining the general standard. We have secured the regulations of the Civil Service Commission, the Canal Zone Government, and the Police Department of the Canal Zone, and we are unable to locate any proscription against "conduct unbecoming an officer." There is no reference to any such regulation either in any ruling or opinion in the record or in the Government's brief.

However, the absence of such a written regulation is not dispositive. Our research discloses that a regulation of the Canal Zone in force at the time was directed at dafamatory statements concerning other officials.[35] Moreover, it is not

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[33] *See generally* Amsterdam, Note, *The Void-For-Vagueness Doctrine in the Supreme Court*, 109 U. PA. L. REV. 67 (1960).

[34] "[P]olicemen, like teachers and lawyers, are not relegated to a watered-down version of constitutional rights." Garrity v. New Jersey, 385 U.S. 493, 500 (1967).

[35] Canal Zone Government Executive Regulation No. 5, Enclosure 1, Offense 15 (1962), designates as impermissible employee conduct which may result in removal, "[m]aking false or unfounded statements which are slanderous or defamatory about other employees, supervisors or officials." A footnote directs the agency to "[c]onsider the duties

feasible or necessary for the Government to spell out in detail all that conduct which will result in retaliation. The most conscientious of codes that define prohibited conduct of employees includes "catchall" clauses prohibiting employee "misconduct," "immorality," or "conduct unbecoming." We think it is inherent in the employment relationship as a matter of common sense if not common law[36] that an employee cannot reasonably assert a right to inveigh against his superiors in public and at the same time keep his job. We believe that Meehan cannot fairly claim that discharge following an attack like that presented by this record comes as an unfair surprise or is so unexpected and uncertain as to chill his freedom to engage in appropriate speech.

b. Turning to the specific items before us we agree with the conclusion of the agency and the Commission that the items distributed by appellant were objectionable.

The poem, "In the Panama Canal Waters," is short enough to reproduce in the Appendix. This man, who "recruits foreign nationals," is identified as one who "belittles U.S. loyalty" and "refutes the wish of Congress by subterfuge and lies," *etc.* The poem must be read in connection with the time and place for which it was deployed. That its character as an intemperate lampoon was not lost on appellant is eloquently revealed by his testimony that he had it printed and distributed because something like this was needed to "move" people.

Appellant's longer letter cannot be considered by itself because it takes on coloration from the accompanying

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and position of the employee, the nature of the statements made and the extent to which they damage the injured party, the nature and timing of any retraction by the employee and the extent to which the damaging statements are supported by established facts." No explanation has been offered as to why that provision and the guidelines for its execution were not the basis for the adverse action under review. We observe in passing the subsequently adopted standards of employee conduct prevailing in the Zone. 31 Fed. Reg. 12349, 35 C.F.R. §§ 255.735-35, -38, -39 (Sept. 16, 1966).

[36] *See* authorities cited in note 31, *supra*.

poem.[37] Appellant meant the poem to stir up the reader enough to be receptive to the suggestion in the letter to write his congressman. They were coupled not only figuratively but literally, for appellant himself stapled them together in sets. The contemptuous quality of the letter's epithets "honorable" and "gentleman" used for the Governor, is underscored by its reference to the "loyal" acts of Edgar Harrison—a Panamanian national who had worked for the United States, but was found during the riots to be a sniper shooting against United States troops.

The record also contains proof that appellant refused to follow the advice of Samuel Roe, a past president and kind of senior adviser to the Union, who had attended the February 4 meeting, that a particularly offensive paragraph[38] be deleted.

Counsel point to statements in the Congressional Record criticizing the Governor of the Canal Zone, statements that are indeed polemical in the extreme. But it is not necessarily true that what may be said by Congressmen, who are duly elected to a coordinate branch and enjoy constitutional immunity from judicial scrutiny, may also be said in a public context by employees of the executive branch.

The fact that appellant was a union president does not establish legal immunity. Indeed it seems to us to underscore the fact that appellant's tirade against the Governor breached the limits of permissible responsibility. His statements would and did reach greater audiences and cut deeper into the employment relationship because they came from a

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[37] *Cf.* Towne v. Eisner, 245 U.S. 418, 425 (1918).

[38] "We do not intend to perpetrate a personal attack on the Honorable Governor of the Canal Zone, for we are aware that he is only a Major General and in reality only an instrument of the boys in the black strip (sic) pants in the State Department, whose major goal since the time of Alger Hiss has been to implement the policy of New Americanism and erase all opinions opposed to their policies."

union president. A union official is not free, as might be a routine employee, to offer as an excuse the contention he had no awareness of basic employment obligations.

What is involved here is not a matter of good taste, but of basic responsibility. We cannot upset the administrative determination that this responsibility was violated. The fact that appellant had motives that seemed to him to be in the interest of patriotism—and that he was very likely more hotheaded than evil in design—may go to the executive question of appropriate discipline. It does not justify his failure to comply with his obligation as an employee of the executive branch, an obligation intensified rather than diluted by the tense and sensitive situation of the time and place.

VII FAILURE TO OBEY INSTRUCTIONS.

There can be no doubt that an employee may be discharged for failure to obey valid instructions, or that a discharge for insubordination will promote the efficiency of the service. The salient issue concerning the second charge is the clarity of the warnings given to appellant at the February 4, 1964, meeting.

Meehan claims that he understood the admonition to be directed against statements to the local press. The Appeals Examination Office dismissed this defense with the observation: "It is inconceivable that the appellant was so naive as to believe that any information given to a reporter from a wire service, which was of local interest and significance, would not appear in a local paper." If we understand this correctly, it was a conclusion as to Meehan's subjective intent, which went beyond that of the Hearing Examiner who heard and observed the demeanor of appellant. Meehan had testified that this was indeed his understanding and that he scrupulously refrained from interviews with the local press.[39] The Hearing Examiner concluded that the defense

[39] Specifically he testified that when reached by Mr. Scott Frances of the Panama-American, notwithstanding "we are close, personal friends," he told Mr. Frances that since he was a reporter of the local press Meehan could not make any release to him.

was invalid because the object of the Governor was to avoid inflaming the tensions between Panama and the United States by press releases of any kind. But he did not find that appellant was reporting falsely on his subjective understanding.

This issue is not without difficulty. Naivete is one thing, insubordination another. Perhaps, indeed, it was the Personnel Director who was naive if he supposed that a complaint telegraphed by Meehan to Mr. Flood and other Congressmen, which admittedly could not be stopped, would not swiftly find its way *via* the Congressional Record, and wire service stories, into the local newspapers. When the Civil Affairs Director of the Canal Zone testified he responded to a question about the particular form of the "instruction" as follows:

> They [the Lieutenant Governor and the Personnel Director] were opposed to making a release. I don't know as there was any specific statement telling them that this is a direct order. (Agency Tr. 48)

Appellant was an employee representative and it was the burden of management to be reasonably precise if, and when, it sought to terminate or suspend freedom to discuss matters of critical union concern in a moderate and responsible manner with the press. Moreover, appellant, as a policeman, was one in whose views the public had an interest[40] unless expression of those views was curtailed with reasonable particularity.

Government officials seeking to inhibit freedom of speech of Government employees have a responsibility to be reasonably specific if they intend that freedom to be inhibited by an order. Otherwise their words may reasonably be taken as a plea for cooperation. The construction that the Zone

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[40]Compare the dissenting observations of Mr. Justice Schaefer in Pickering v. Board of Educ., *supra*, note 24: "Teachers are not necessarily the best critics in matters of school finance and administration, but they are in closer contact with the actual operation of the schools than anyone else and the public should not be deprived of their views." 225 N.E.2d at 10. *Compare also* Bond v. Floyd, 385 U.S. 116 (1966).

officials were using an approach rooted in cooperation and agreement rather than mandate is by no means fanciful in view of their ultimate lack of power in fact to preclude widespread publicity since channels of communication which could not be clogged were available through Congressmen.

The Hearing Examiner concluded that while this was phrased as a request, the surrounding facts show "that Mr. Meehan in being 'requested' . . . not to release information to the press . . . was in fact being 'instructed' not to do so."

The duty of a court to consider whether the record contains substantial evidence to support an agency's findings must not be scanted when the underlying issue is whether there was an outstanding order prohibiting speech. We believe, as already indicated, that in those tense days the Canal Zone Government had the right to curtail freedom of speech by its employees, but think it had a correlative duty to set forth its prohibition with reasonable clarity and particularity. We do not say the prohibition can never be implied from circumstances. Nor do we say that the existence of an order is always negatived by the phrasing as a request. Sometimes, in some contexts, as the Ensign said to the Admiral, "Your every wish is my command."

However, the evidence before us does not ring out with requisite clarity. Even in his memorandum written 11 days after the meeting, 8 days after the news stories, and 3 days after appellant had already started distributing the intemperate poem and letter, the Personnel Director wrote it up softly, that he "*cautioned* the Union representatives to keep their opposition in regular channels . . . [and] to *avoid* local issuance of comments or statements which could be used by the Panamanian press . . ., [and] should *take every precaution to avoid* being quoted in the Panamanian press on this issue." [Emphasis supplied.]

VIII Failure to Obtain Clearance.

The final charge stemmed from a violation of Canal Zone Government Executive Regulation No. 67, Part V, § 5 (1963), which provided at the pertinent time:

> *Permission to publish articles.* Employees shall obtain clearance from the office of the Governor before releasing for publication articles pertaining to Government activities in the Canal Zone. The purposes of the policy are: To guard against improper use of official information obtained in the course of employment and affecting interests of the Government; to minimize the publishing of inaccurate information concerning activities and policies of the Canal agencies; and to avoid leading anyone to believe that information published by an employee has official sanction when such writing represents only an employee's personal views.

The agency's examiner and the Commission's Examining Office both concluded that the regulation was valid and that appellant had violated it by holding the February 5 interview and by supervising the publication of the poem and letter. Ordinarily the courts will accept the interpretation an agency gives to its own regulations.[41] However, when a disciplinary proceeding involves an issue of fair warning, additional considerations are involved.

What notice was given to this employee by this regulation? It sets forth the need for clearance before an employee may "publish articles."[42] A central purpose is stated as that of obviating misunderstanding, avoiding the possibility that a reader will take the employee's views as those of the Zone. Looking at the regulation alone, both text and context, there is at least a doubt whether it may fairly be taken as prohibiting an oral interview by an employee representative taking issue with a management decision.

The agency's practice is also important, of course. It may in some instances supply a warning not given by the text of the regulation as such. Here, however, appellant calls to our attention the interpretation of the clearance regulation

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[41] 4 K. DAVIS, ADMINISTRATIVE LAW TREATISE § 30.10 (1958).

[42] At the inception of the hearing in the agency, appellant argued that his statements were not "articles" that had to receive clearance and that if they were held to be, the regulation would be in contravention to the Constitution. (Agency Tr. 2-3.)

(Executive Reg. 67), which the agency made in the related discharge proceeding involving the author of the poem, Mr. A. C. Payne. In Payne's case, the hearing examiner declared that agency employees had long engaged in the practice of submitting opinions for publication to the local newspapers without any record of adverse consequences. "[T]he writing of remarks against the Government in the columns of the Panama papers was considered fair tactics, and would not subject any employee to any penalties." On the record, Executive Regulation 67 may have lapsed for desuetude in the absence of some notice reinstating its potency.[43] We think that appellant has raised sufficient unrebutted doubts about the scope and applicability of it to prevent its use as an effective basis for penalizing his conduct.[44]

IX REMAND.

The second and third of the three charges cannot support the discharge. It does not inexorably follow that the discharge itself was contrary to law. However, it is unclear whether the three charges were deemed by the agency and the Civil Service Commission to constitute separate or cumulative grounds[45] for discharge. We cannot treat the

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[43] Whatever disabilities the executive branch may have to abrogate the effect of a valid legislative enactment by long-standing non-enforcement, *see* 1 J. SUTHERLAND, STATUTORY CONSTRUCTION § 2034, at 510-13 (3d ed. Horack 1943), we are confident that an agency does not have untrammeled freedom to promote regulations; to acquiesce in, if not induce, their violation by desuetude; and then come crashing down on the "offender" with a discharge from employment. *See* Monahan v. United States, 354 F.2d 306 (Ct. Cl. 1965) (by implication).

[44] In light of our conclusion that charge 3 cannot stand, we need not consider whether or to what extent the "prior clearance" regulation may suffer from either over-breadth, *cf.* United States v. Robel, 389 U.S. 258 (1967); or must be accomplished by procedures permitting prompt determination of application for clearance, *cf.* Teitel Film Corp. v. Cusack, 390 U.S. 139 (1968) (per curiam).

[45] *See* Pelicone v. Hodges, 116 U.S.App.D.C. 32, 320 F.2d 754 (1963); Greenway v. United States, 175 Ct.Cl. 350, *cert. denied*, 385 U.S. 881 (1966).

errors as harmless since we don't know that a finding on Charge 1 alone would have resulted in a discharge[46]—especially in light of the spectrum of punishments the agency could have imposed[47] for conduct which, as already indicated, is not altogether void of Constitutional protection. The cause is remanded to the District Court for the framing of an order retaining jurisdiction pending further consideration by the Canal Zone Government and the Civil Service Commission.[48]

So ordered.

[46] *Cf.* Braniff Airways, Inc. v. CAB, 126 U.S.App.D.C. 399, 411-15, 379 F.2d 453, 465-69 (1967).

[47] *See* Canal Zone Government Executive Regulation No. 5 (1962). Particularly relevant is Enclosure 1, "Schedule of Disciplinary Offenses and Penalties."

[48] *See* VanBourg v. Nitze, __ U.S.App.D.C. __, 388 F.2d 557 (1967).

APPENDIX

In the Panama Canal Waters
by A. C. Payne

Someone rocks the hull
Of our U.S. Constitution,
He grabs it by the gunwales
In a foreign revolution.

He dampens Civic powder,
Muzzles Union guns,
Recruits the foreign nationals,
Rejects the native sons.

Refutes the wish of Congress
By subterfuge and lies,
Twists knives of propaganda
While factual heartbeat dies.

He belittles U.S. loyalty,
He scorns U.S. tradition,
And if we dare participate
He brands it as sedition.

He stills militia's muskets,
Condemns them to the walls,
All U.S. looks on aghast
As every statute falls.

But we're saddled with him.
He struts athwart the deck,
Causing by misjudgment
The Constitution's wreck.

TAMM, *Circuit Judge, dissenting in part:* I dissent from those sections of the majority opinion which hold that the second and third charges do not support appellant's discharge. I would therefore affirm the District Court.

The scope of judicial review in a case of this type is an exceedingly narrow one. *McTiernan* v. *Gronouski*, 337 F.2d 31, 34 (2nd Cir. 1964). If the agency's decision is not arbitrary or capricious, that is where the agency's findings are "supported by evidence," *Pelicone* v. *Hodges*, 116 U.S.App. D.C. 32, 33, 320 F.2d 754, 755 (1963), or stated otherwise, where "there is a rational basis for the [agency's] conclusions . . . .," *Eustace* v. *Day*, 114 U.S.App.D.C. 242, 314 F.2d 247 (1962), we have held that the agency's action must be upheld. Although "[t]here may be ground for reasonable differences of opinion . . . ." on the factual issues, *Studemeyer* v. *Macy*, 116 U.S.App.D.C. 120, 121, 321 F.2d 386, 387, *cert. denied*, 375 U.S. 934 (1963), a court will not disturb the agency decision if it is supported by substantial evidence. The record before us, I am convinced, contains more than ample evidence to support the findings of the Hearing Examiner who first heard the charges against appellant. Appellant's appeal to the Appeals Examining Office resulted, after a detailed review of the evidence, in the upholding of the findings of the trial examiner. Thereafter an appeal to the Board of Appeals and Review of the Civil Service Commission resulted again in an affirmation of the decision against appellant. Finally a careful and experienced District Court Judge, with a full and complete record of all of the facts and evidence before her, concluded that this evidence justified the action against appellant. Upon this record, then, I would affirm the action of the District Court.

SUPREME COURT OF THE UNITED STATES

No. 325.—October Term, 1967.

James A. Watts et al., Petitioners, v. Seward School Board et al. } On Writ of Certiorari to the Supreme Court of Alaska.

[June 3, 1968.]

Per Curiam.

The judgment is vacated and the case is remanded to the Supreme Court of Alaska for further consideration in light of *Pickering* v. *Board of Education of Township High School District 205, Will County, Illinois, ante,* p. —.

Mr. Justice Douglas, with whom Mr. Justice Black joins, would reverse the judgment outright for the reasons stated by him in *Pickering* v. *Board of Education, ante,* at —.

Mr. Justice White dissents.